



TRIALS
OF
THE RIOTERS.



[Price One Shilling.]

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The Report of the Trials

OF THE

RIOTERS,

AT

THE ASSIZES HELD AT WARWICK,

AUGUST 20, 1791,

BEFORE

The Right Hon. Mr. Baron Perryn.

TAKEN IN SHORT-HAND,
BY MARSOM & RAMSEY.

BY ORDER OF THE COMMITTEE OF PROTESTANT
DISSENTERS IN BIRMINGHAM.

Birmingham,

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Advertisement.

THE Publication of the following Trials originated from Observations that were made in the Course of the Trials of the Rioters at Worcester Assizes.

That an authentic and accurate Narrative of the Proceedings on the late Trials of the other Rioters committed to take their Trials at the late Assizes at Warwick, might be fairly submitted to the Examination of the Public, the Committee of Protestant Dissenters of Birmingham, appointed Messrs. Marsom and Ramsey, Short-hand Writers, of London, to attend at Warwick for that Purpose; from whose corrected Copy these Trials are now printed.

.....

List of the Jurors on the following Trials.

James Aspinall, Birmingham	John Cox, Napton
Benjamin Sutton, ditto	Isaiah Steele
John Merry, ditto	Richard Cole
John Winfield, ditto	William Cove
Henry Parker, ditto	Benjamin Dadley, Loxley
John Clarke, ditto	John Whynal
John Trehern, ditto	—— Haslewood, Hampton
John Guest, ditto	Lucy
John Hitson, ditto	John Hitchcock, Edge Hill
Christopher Law, ditto	John Eaves
Edward Bowyer, ditto	Thomas Edkins
Joseph Lyndon, ditto	Edward Dunn, Kennilworth
William Ladbroke	Richard Radburn, Napton

The Trials of the Rioters.

FRANCIS FIELD, *alias* RODNEY,

*For setting Fire to the Dwelling-house of John
Taylor, Esq.*

NAMES OF THE JURY.

James Aspinall, Birmingham

Benjamin Sutton, ditto

John Merry, ditto

John Winfield, ditto

Henry Parker, ditto

John Clarke, ditto

William Ladbroke

John Cox, Napton

Isaiah Steele

Richard Cole

William Cove

Benjamin Dadley, Loxley

The Indictment was opened by Mr. *Percival*.

Mr. NEWNHAM.—**M**AY it please your Lordship,....
Gentlemen of the Jury,....It is my peculiar province in the
situation in which I stand, to state to you and to support
this prosecution upon the grounds which I shall proceed
to lay before you.

Gentlemen,—It is impossible not to feel upon an oc-
casion like the present, and in some degree to commiserate
the unhappy prisoner at the bar, who stands charged with
the offence you have now heard stated.—Gentlemen, he
stands charged with setting fire to, and burning the house
of John Taylor, Esq.

Gentlemen of the Jury,....At the commencement of
the several trials which will succeed in their due course to
the

the present now before you, you will permit me to bring to your recollection, what I think you must know, because no man in the kingdom is a stranger to it, that on the 14th and 15th of the last month, or perhaps a little after, such tumultuous and dangerous riots took place as were a scandal and reproach to any well-regulated government, and it was impossible with the exertion of the magistrates, and the assistance of many well-disposed inhabitants of Birmingham, to withstand them; for they did as much as in them lay to prevent the spread of this violence, but they were borne down by the tide of tumult, and even justice itself was overwhelmed by the rapid rush of violence and desolation.....Gentlemen, they were carried to such excess, that his Majesty, the great father of his people, and the protector of the peace of the country, has thought fit, in order to preserve the property of his subjects for future by lessons of wholesome prosecution, in the most solemn manner has taken up this matter as an act of government. I state it so, Gentlemen, and at the same time, as one of the servants of the crown, I must state to you, that though I may pity that unfortunate prisoner, who in a phrenzy of delusion thought fit to ruin and demolish, by setting fire to and burning, one of the most elegant structures in this county, belonging to a man whose public and private character is high in the estimation of all his neighbours, without the smallest provocation, without the smallest reason, but actuated by phrenzy, I mean the phrenzy of delusion, he has suffered in his property to a most exceeding great degree.Gentlemen, I have nothing to do, nor have government any thing to do with the private opinion of any man. Vicissitudes of opinion have produced sometimes the foulest and most dreadful effects. We all recollect the riots in the year 1780, when the capital was threatened with destruction, and was almost lighted throughout from one end to the other with fires kindled by the phrenzy of delusion.

Gentlemen,the prisoner stands charged with setting fire to the house of Mr. Taylor; whatever opinion he may entertain need not be enquired into by you, but this I know, and this you well know and feel, that the only safeguard of the Constitution of this country is the law, that
is

is the general protector of our property and our lives, and without that substantial protection we should be all subject to the assumed tyranny of opinions imposed by a tumultuous rabble in every part of his Majesty's dominions.

Gentlemen,Having thus stated to you, without wishing to pursue, because that I know is not the object of government, to pursue, by any other means than those of fair evidence before the judges of the Constitution, namely, you, Gentlemen of the Jury.I have told you that on the 15th of last month a tumultuous rabble assembled before the house of Mr. Taylor. Liquor was at first their pretence and their demand; after this requisition had been complied with they went awaythey returned shortly afterthey broke into the housethe prisoner at the head of them, and not satisfied with destruction by throwing out the furniture, fire was set to the house, the prisoner himself was seen to do it, and to feed the fire which burnt the house.Gentlemen, if this is proved to you, I need not say what your verdict will be; I remind you, because I know that you are the preservers of the Constitution, and will do that which a Jury ought to do, namely, their duty, upon the evidence.

EVIDENCE FOR THE CROWN.

EDWARD COTTERELL sworn;—examined by Mr. *Coke*.

Q Where do you live?....A At Deritend in the parish of Aston, near Birmingham.

Q Was you at Birmingham the 15th of July last?....

A I was at Deritend.

Q How far is Mr. Taylor's house from Deritend?....

A About three quarters of a mile.

Q What is the name of it?....A I do not know.

Q Was you at Mr. Taylor's house upon the 15th of July?....A Yes.

Q What time in the day?....A About three o'clock in the Afternoon, I walked about and stopped there till five.

Q You was there from three to five? Did you observe a great number of people about Mr. Taylor's house at that time or not?....A Yes, a great many.

Q Had any mischief been done at that time, between three and five?....A No.

B

Q At

Q At what time did you return again?....A About five.

Q But what time did you go back to Mr. Taylor's house?....A About seven.

Q Was there a large number of people about the house at that time?....A Yes.

Q What were they doing?....A Walking about, I saw no damage done.

Q At what time did they begin to do damage?....

A About eight o'clock in the evening.

Q What did they do first? A Knocked the windows to pieces and the hall door.

Q At this time did you observe the prisoner amongst them?....A No.

Q When did you first observe him?....A After they began to break to pieces and just got in, I saw him come from the other end of the house and join them.

Q About what time might that be?....A About ten minutes or a quarter of an hour after they began to break the windows and the door.

Q Relate to his Lordship and the Jury slowly, what you saw that man do?....A First of all he came huzzaing and joined them and was very full of liquor, seemingly he went up the steps towards the door, and I saw no more of him for some time.

Q When did you see him again?....A About nine o'clock or half an hour after.

Q What did he do when you saw him again?....A I saw him upon the gravel walk facing the parlour windows, and he threw some broken window-frames, and shutters, and beadsteads into the fire in the house.

Mr. WILLIS.....This indictment is upon the face of it merely *Arson*; I submit to your Lordship whether you do not think this goes to make an improper impression upon the Jury when they are trying merely for *Arson* and not for a riot.

Mr. NEWNHAM.....I am surprised to hear the learned Gentleman state the objection as he did, unless he did not hear what the witness said, he said he saw him take some shutters and throw into the fire in the house.

Mr. COKE.....What did you see him do at nine?....

A At nine or about half past he threw in some window-shutters,

shutters, window-frames, and some pieces of bedsteads that were dashed to pieces, and he threw them upon the fire in the parlour, upon the parlour floor.

Q The parlour windows were broke and out?....A Yes.

Q He threw window-frames, shutters, and parts of bedsteads?....A Yes.

Q What did he say when he did this?....A Huzzaing.

Q Was he very active or not?....A No, he huzzaed.

Q How many people might there be about Mr. Taylor's house at this time? Did you see that man do any thing more;....A No.

Q Was the house set on fire?....A Yes.

Q Was it burnt down?....A Yes.

COURT.....If I understand you right there was a fire made for the purpose of burning the house upon the parlour floor, not in the fire-place?....A Yes.

COURT.....And that the prisoner fed that fire by throwing upon it pieces of bedsteads, shutters, and window-frames?....A Yes.

EDWARD COTTERELL cross examined by Mr. Clarke,

Q How long had that fire been lighted?....A I do not know.

Q Who lit it do you know?....A I do not.

SAMUEL HEELY sworn....Q Where do you live?....
A In Charles-street, Birmingham.

Q What is your business?....A A Button-maker.

Q Do you know Mr. Taylor's house at Aston?....
A Yes.

Q Where is it?....A In Aston.

Q Did you see that house on the 15th of July?....
A Yes.

Q At what time did you go there?....A About half after eight.

Q Tell us what you saw there?....A I went up to the gate and made up to the Hall, I saw a number of people about it, I asked them what they were about, they said they expected Mr. Taylor's house to be set on fire that night, there was a fire brought from out of the lane by Mr. Taylor's house from the Horse and Jockey.

Q Do you mean that firebrands were carried out of the lane to this house?....A Yes.

Q And two fires were made of it?....A Yes.

Q Where were the fires made?....A Before Mr. Taylor's house door, and to that fire the furniture was flung out from the chamber window, they were damaged, thrown out of the windows, and then burnt, I went round the hall and then the fire was flung into the hall, and I saw a man come down stairs and carry it up stairs.

Q What man was that?....A His name was Francis Field, he went by the name of Rodney.

Q Look at the prisoner?....A That was the man.

Q Repeat it?....A I saw the prisoner carry the fire up Mr. Taylor's house and carry it into one room first, I saw him go into the room with the fire in his hand, he left the fire he carried in his hand; he came down again, took more fire up from the flags in the hall, took that up stairs, and left it in another room.

Q Did you see him do that?....A Yes, he came down a third time, laid hold of me by the arm, and told me to go up stairs and look about me, he had more fire in his hand, and then he went up stairs and laid the fire upon the stairs upon the square.

Q What do you mean by the square?....A The first landing place, there was about half a dozen steps up to the square

Q What was the stair-case made of?....A I took it to be mahogany.

Q It was a wooden stair-case?....A Yes.

Q He desired you to go up stairs?....A Yes, and look about me, I made answer to him that it would be better for him to let that alone, the fire lit so quick upon the stairs that I could not go past it; and there was a man that made up stairs and jumped out of the window.

Q Did the stair-case take fire in consequence of the fire he placed there?....A Yes, and burnt so quick we were obliged to make away with ourselves.

Q You were obliged to run out of the house for your own safety?....A Yes, me and Mr. Taylor's servant.

Q Tell me what it was that the prisoner put upon the stair-case?....A He cut the paper off the wall and laid it upon

upon the fire, and the furniture that was broke upon the stairs, and stirred it about with a stick that I had in my hand.

COURT. This was upon the landing of the stairs?

A Yes.

Q How long did you stay at Mr. Taylor's house? A From about half after eight till near twelve.

Q What was the effect of this setting fire to the stair-case, and the different rooms you have been speaking of?

A It was a long time before we could tell the consequence.

Q But in what condition was the house, was the house or not burnt down? A The roof fell in from the fire that was set to the rooms and the stair-case, about eleven o'clock.

Q Did you know the prisoner before this? A Yes, I knew him some years by sight, I understand that he was born at Birmingham, and was apprentice in the parish.

Q Are you sure he was the man? A I am sure he was the man at the time.

SAMUEL HEELY cross-examined by Mr. *Willis*.

Q Did the prisoner appear to be sober? A That I cannot say he seemed to be sober.

Q How was you? I went from a hard day's labour at half after eight.

Q The last witness told us the prisoner was exceedingly drunk? A I believe he was rather.

Q If I understand you right, when you first went to Mr. Taylor's house the fire was burning before the door? A Yes.

Q And after that you saw some persons take some fire into the hall? A Yes.

Q Into the parlour? A Into the front hall.

Q Did you observe what course the fire took that was thrown into the hall? A I did not see that that fire did any damage while I was in the hall, till the fire was carried up stairs, which was the occasion of the roof falling in.

Q Why, you was up stairs? A No, I stood at the bottom of the stairs upon the square, and I saw him through the passage into the room.

Q Then how can you tell that the fire in the hall did not burn the house? A No, it did not.

Q How do you know that?....A Because I was in the hall all the time till the roof fell in.

Q Were there not fires at this time in other rooms in the house? Was not there a mob of people all about the house?....A Yes, on the outside, but no one on the inside.

Q Were there not more fires at this time burning on the inside of the house, in other rooms than those you have described? I ask you whether there were not other rooms in the house burning?....A Not that I saw.

Q You could not see all the rooms in the house?
A No.

Q Then, for any thing you know, there might be fire burning in other rooms?....A I do not know, I could not see all the rooms.

Q There were a vast number of people about the house, and only you and the prisoner in the house?....A Yes, and Mr. Taylor's servant.

Q Who do you work for?....A Mr. Sutton.

Q How came you at Mr. Taylor's house? Did you go with the mob there?....A No, I did not see any mob.

Q Not see any mob in Mr. Taylor's house.....A No, except ten or a dozen drunken people about.

Q Did you see any body else there that you know?....
A Not by name.

Q Do you know the prisoner by his name?....A Yes.

Q At that time?....A Yes.

Q Where did you ever see him before? A In Birmingham; he used to go along with the coal carts; he used to serve us with coals.

Q You saw no one else that you knew? A No, not doing damage.

Q Nobody else whatever?....A No.

Q And there might be fires in other parts of the house for ought you know?....A I do not know.

Q Mr. ———, this hall you are speaking of, was it paved with flag or boarded?....A Flag-stones.

JOHN BROOKES sworn.—Q. Where do you live?....
A At Deritend.

Q What business are you?....A A file-forgery.

Q I believe you know Edward Cotterell?....A Yes.

Q What is he?....A He works for me.

Q Do you know Mr. Taylor's house at Aston?

A Yes.

Q Did you see it upon the 15th of July?....A Yes.

Q About what time of the day?A Between nine and ten o'clock.

COURT.....Morning or evening?....A At night.

Q Be so good as to tell us what you saw there?

A When I came there, there were two fires before the hall, and somebody threw some fire into the windows; there was fire in the first floor; the prisoner took up some of the goods that were thrown out of the house, such as the window-frames and shutters, and threw upon the fire on the outside of the house; in the next place he was throwing them into the window.

COURT.....Into the window of the parlour, or where?....

A It was on one side of the door, in the middle of the hall.

COURT.....By the prisoner?....Yes.

Q What do you mean by the parlour?A I mean a parlour such as the Gentlemen sit in.

Q Was it in that room you saw him throw the fire?

A Yes.

Q Did you see him throw any thing upon the ground-floor?....A Yes.

Q What was it?....A I look upon it it was strips from the windows, window-frames, or pieces of goods.

Q What was the state of that room at the time he flung those things into it?....A It was on fire.

JOHN BROOKES cross examined by Mr. *Clarke*.

Q All I understand you to say is this, that you saw some things throwing out of the windows; that the prisoner was on the outside of the house; that he took them up and threw them upon the fire on the outside of the house?....A. Yes, and into the parlour which was then on fire.

Q Did you know him before?....A Yes.

Q You did not yourself see him throw any fire, only pieces of window-frames, and things that had been broke, upon the fire?....A Yes, I did not see him throw any fire.

SOLOMON

SOLOMON GARDNER *sworn*.....Examined by Mr. Newnham.

Q. You are in the service of Mr. Taylor?....A. Yes.

Q. And were on the 15th of July last?....A. Yes.

Q. Tell me what condition the house was in?....A. In very good condition.

Q. Upon the 15th of July?....Yes.

Q. What condition was it in at the expiration of the night of the 15th of July?....A. All demolished by the fire, burnt and tumbled in.

Mr. CLARKE (*on the part of the prisoner*).....I would observe to your Lordship that it appears upon the face of the indictment, that this prisoner is charged with the crime of *Arson*, that is, wilfully setting fire to any house.—It appears from the evidence that the fire was already made, that the parlour was on fire, and that then the prisoner threw a quantity of goods, which were thrown out of the house, upon that fire; but there is no evidence before your Lordship that the prisoner was the person who set the house on fire, and your Lordship sees the Jury must be satisfied that he was the person that did actually set fire to the house.—The second witness told you that some other part of the house was set fire to, but if this lower room was first set fire to, then, before the the prisoner is proved to have any thing to do with it, the fire was made, and the house beginning to burn, and, if so, the Jury cannot be satisfied the prisoner was the person who set fire to the house, and therefore it is not within the Statute, if he did not set fire to the house.

Mr. WILLIS.....I must submit to your Lordship that it is for the Jury to say whether the fire put above stairs burnt the house.—As to the evidence given of the fire in the Hall, I beg leave to support Mr. Clarke's objection, in saying if there is any evidence at all against the prisoner it is merely feeding the fire, and not of setting fire to the house.—In the first instance now, it does seem to me, in point of law, excessively hard upon the prisoner if it should appear that at the time he so put fuel upon it, and so spread it, and that that fire was likely from the hall to burn the house, and was proceeding so to do, it appears to be hard upon the prisoner, in point of law, that he

should upon this Statute be called the principal in that offence.

COURT.....The case should be left to the Jury.—If a person brings a small quantity of fire into the house and another carries a quantity of wood and feeds it, it is as much burning it originally as if he had actually set fire to it.

SUMMING UP.

COURT.....Gentlemen of the Jury, this is an indictment founded upon an Act of Parliament made 9 Geo. I. commonly called the Black Act; I did think myself that the prosecution was founded upon the Riot Act, but I find it is upon the Black Act for wilfully, maliciously, and feloniously setting fire to the dwelling-house of John Taylor, Esq. on the 15th of July, at Birmingham, against the Statute.—By the Black Act there is a provision, among a variety of cases that are put there, for certain Acts that the Legislature of that time thought proper to make a law to prevent; and amongst other offences that are collected together in that Act there is one, that whoever shall wilfully and maliciously set fire to any house, barn, or out-house, or to any hovel, stack of corn, straw, hay, or wood, it shall be felony without benefit of clergy.—This is the law upon which this prosecution is founded, and it is supported upon the evidence of three or four witnesses.—The first is *Edward Cotterel*, he tells you he lives in Aston parish, at a place called Deritend, that upon the 15th of July last there were a number of people collected at Mr. Taylor's house, that he went there about three o'clock and continued there till five o'clock, during which space of time no mischief whatever was done; these people continuing there, his curiosity led him there again, and about the hour of seven he came to this house; he says they had not done any mischief even at this time, but about eight o'clock in the evening they knocked the windows and hall doors in pieces, and gained admittance into the house by this means; he says he saw the prisoner at the bar coming in about ten minutes or a quarter of an hour after the windows had been broke, and he joined this mob, he was there before, but did not join them till about ten minutes

or a quarter of an hour; ...that he came there full of liquor, huzzaing and making a noise; he went up the steps towards the door; afterwards, he says, he did not observe him; what became of him for some time, he does not know, but he says at nine o'clock he saw the prisoner upon the gravel walk, and he threw some broken window-frames, and shutters, and bedsteads which had been thrown out of the house into the parlour upon that fire upon the floor of the parlour, and the house was afterwards burnt down; but he says that from his observation the prisoner did not appear to be one of the most active in the business according to his ideas.

Gentlemen, the next and principal witness in this case to affect the prisoner seems to be a

Mr. *Heely*, he says he is servant to Mr. Brookes, he was at Mr. Taylor's house on the 15th of July, that he went there about half after eight in the evening, he saw a great number of people collected together, and there was a talk, a rumour that the house would be burnt down; he seems to have been present at the time of the first transaction, for he says fire was brought from a lane near the house, I think from a public house known by the sign of the Horse and Jockey, and was brought to Mr. Taylor's house, when this fire so brought from this house was lying opposite to Mr. Taylor's house, and was divided into two fires, and as I understand him fuel was brought to it so as to make one large fire; the house had been entered before, the furniture was thrown out of the chamber windows, the fire was taken from these two fires and thrown into the hall which had a flag floor; he says he went into the hall, he saw the prisoner come down from above, he saw the prisoner gather the fire out, carry the fire from the hall which was a flag floor up into the apartments which were floors of wood; he first took a quantity into the first room and left it there, came down, supplied himself with another quantity, and carried it into a separate room, not satisfied with this, he came down stairs and took the witness, who was in the hall all the time, by the arm, and told him to go up stairs and look about him, supposing him to be as well-disposed to burn down the house as the prisoner himself, he says he supplied himself a third time with fire from the hall, and carried

carried it to the landing place of the stairs which was wood, he fed and supplied the fire from the stair-case with paper-hangings and pieces of furniture which had been thrown down out of the house; in short, he supplied it so effectually, that it raged with such violence that he was obliged to run away in order to preserve his life, for his own safety.... Gentlemen, he seems to me to have been as active as a person could be under such circumstances, he was not satisfied with the slow burning of the house, but he stirred it with a stick in order to give it more violence, and that the house might be burnt down with more rapidity. That seems to have been the act of the prisoner at the bar, the witness tells you he staid there till near twelve; if you believe this witness's testimony to be true, this prisoner seems to be the most active person of all the mob by far. The fire that was thrown upon the flags in the hall did not burn down the house, for the roof of the house fell in while the witness was in the house, and that according to his idea there was no damage done by the fire in the hall so as to burn down the house; he says it is a large house, there might be for ought he knew other fires in the other rooms of the house, for that seems to be the point principally relied upon by the learned counsel for the prisoner; according to my apprehension in point of reason and in point of law, he is as much guilty of setting fire to the house as if he was the person who had first set fire to it, but according to the evidence of the second witness he seems to have been the person who did more damage to the house than any other person, that is my idea; as to his being drunk it is no excuse at all, it is rather an act of aggravation, no man can excuse himself from one crime by another, that is common reason; therefore this cannot have any weight in my apprehension, but you, Gentlemen, are not to be governed by any thing I say upon the subject.

Mr. *Brookes* says that the first witness works with him, that he is a file forger, he says that he was at Mr. Taylor's house between nine and ten at night on the 15th of July, he confirms Cotterell's evidence in some instances; he saw the prisoner take up pieces of the furniture and frames and throw them into the ground floor, the parlour, and

picked up bits of window frames and furniture and threw it upon the floor upon the fire then lighted in the house.

The evidence of *Gardner* only goes to prove that Mr. Taylor's house was in good condition at the time of these acts, and that it was burnt down, so that the crime alleged in the Indictment was completed; if you are satisfied it was done by the prisoner you will find him guilty, if you are, not you will acquit him.

Mr. Sutton, (*one of the Jury*)....I have some doubts in my own mind respecting the veracity of Mr. Heely, the second witness, he is a servant of mine.

COURT....Then if you think he does not deserve credit, his evidence goes for nothing; you had better go out and confer upon it.

GUILTY.*Death.*

.....

WILLIAM RICE,

For pulling down the Dwelling-house of William Hutton.

NAMES OF THE JURY.

James Aspinall, Birmingham.
Benjamin Sutton, ditto.
John Merry, ditto.
John Whynal,
Henry Parker, Birmingham
John Clarke, ditto

Richard Cole
William Cove,
Benjamin Dadley, Loxley
——— Haslewood, Hampton-Lucy
John Hitchcock, Egde-Hill
John Trabern, Birmingham.

MR. NEWNHAM, **M**AY it please your Lordship,—
 Gentlemen of the Jury—In the last trial it was my duty to state to you the circumstances of the case, it being the first of the kind, and to make a few observations on behalf of the Crown. That indictment was for setting fire to the house of Mr. Taylor; this prisoner at the bar stands charged with a crime of no less dangerous tendency to the
 peace

peace and property of his Majesty's subjects ; it is for being assembled with certain other persons to the number of twelve or more, in a riotous and tumultuous manner, pulling down, or beginning to pull down, and demolish a dwelling-house belonging to one of his Majesty's subjects. I confine myself to that, because the offence with which the unfortunate prisoner stands charged, is an offence of that nature. His Majesty, from an affectionate regard to the peace of all his subjects, has thought fit (in order to prevent a repetition of offences similar to that with which the prisoner is charged) to make it a capital offence. Those tumultuous riots which have of late disturbed the affrighted town of Birmingham, the seat of wealth and commerce, were committed by a lawless and tumultuous rabble, which the united efforts of a noble Lord in the commission of the peace, with other magistrates, was not able to quell. This person whose house was begun to be pulled down and demolished, and was in fact pulled down and demolished, did not upon this occasion himself take up the prosecution ;--- government have directed him to prosecute. Gentlemen, I am sure it is not my wish that any thing that I can say should have any weight with you farther than I prove it by evidence. The learned counsel will give every assistance to the prisoner that law or fact can give him.

Gentlemen The house he stands charged with having pulled down and demolished, or begun to pull down and demolish, is the house of a respectable gentlemen of the name of Hutton, who is, I believe, one of the commissioners of the Court of Requests. I should not have mentioned that circumstance, if it had not been that amongst the other crimes of this tumultuous and lawless rabble, when the prisoner at the bar was remonstrated with, as I am told, and the rabble of which he made a part, were begged not to destroy the house, nothing less than destruction would satisfy that man ; for you will find him swearing he would be revenged of Mr. Hutton *because of the Court*. Gentlemen, you will find him taking a very active part in this business, though it would not be absolutely necessary in point of law to prove him doing any thing more than encouraging and abetting, but you will find him taking a very active part among them.

GentlemenAfter having stated this, I shall not trouble you with a statement of facts. Looking upon my station under the direction of his Majesty as a servant of the Crown, I take a part in this prosecution for the benefit of his most liege and faithful subjects. You, Gentlemen, will in your turn, execute the law which is your duty; I do not mean without feeling, but you will do that justice which your duty requires, because by your oaths you are bound so to do.

EVIDENCE FOR THE CROWN.

Joseph Cresswell sworn (examined by Mr. Sutton.)

Q What is your business?A gardener.

Q Do you know Mr. Hutton?A Yes.

Q Did he employ you to do any thing?A Yes, to put his garden to rights. On the 15th of July he asked me to stay all night, because he expected the mob to come and destroy his house.

COURT. You was not a regular servant?No, only occasionally employed.

Q Did you stay there?A Yes.

Q Tell me whether any thing happened at that house in the course of the night?A Not till next morning about half past four o'clock, as nigh as we could guess, the mob came huzzaing, and crying, church and King for ever.

COURT. How many persons might there be?A As near as we could guess, about twenty or twenty-five; they came to the house and demanded liquor, and I offered to fetch them what they liked, by Mr. Hutton's order. They would not accept of my fetching it; they proceeded into the cellar and fetched up two barrels one after the other, they were quarter barrels; they drew it out into a pail, and drank what they liked.

COURT. They emptied the barrels?A Not quite; but what they did not drink they let run about.

COURT. Was Mr. Hutton absent from his house at the time?A Yes; he went away at two o'clock that morning. They found out the bread and cheese, and were not pleased because there was not enough; I went to the public-house, and asked them to let me have some bread and cheese; and they ate the bread and about half the

the cheefe that I brought, and then with our persuasions they went away.

Q After that did they return ?....A Yes.

Q At what time ?....A Very near six o'clock.

Q Were they in greater numbers, or fewer ?....A In greater numbers.

Q Was there any particular person you saw there ?....

A This man came first to the house, and another man with him.

COURT. That was the first time ?....A The second time. The prisoner came first up and another man with him, and I knew them both.

Q Upon their coming the second time, did any thing happen ?....A A number of them came, and I spoke to the prisoner at the bar.

Q Tell us what passed ?....A I said to him, what brings thee here among the crowd ? he made me some slight answer. And says I, for God's sake, do not destroy the building ; take what you have a mind, but do not destroy the building. That was what I said to the mob.

COURT. To them all ?....A Yes.

COURT. You did not direct your discourse to the prisoner in particular, but to the mob in general ?....A To the mob in general ; but the prisoner made answer, and damned his soul if it should not come down.

Q The prisoner answered as the ringleader ?....A They both made that answer, they seemed to be the two ringleaders.

COURT.....He or they would be damned ?....A They would be damned if they would not have it down, that was the word, accordingly the prisoner immediately struck the kitchen window.

Q To break it ?....A Yes, and to knock it all to pieces, window-frame and all.

Q Had the prisoner any thing in his hand ?.....A. A bludgeon.

Q Were the others armed or not ?.....A Yes, with bludgeons.

Q Did any body get into the house ?....A Yes, I saw Rice for one striking the bannisters of the stairs, and throwing them through the windows into the garden.

COURT. You saw him pulling the bannisters of the stairs to pieces?....A Yes, in company with the others.

COURT. Do you know to what number were then in the house?....A I do not; there were some on the stairs and some round the house.

COURT. How many do you conjecture?....A I suppose as much as ten in the house, but I cannot say exactly.

Q How many were there round the house?....A About thirty.

Q Did they all come together?....A There were more came afterwards; I suppose thirty came the second time in a body.

Q You spoke to the windows being broke and the bannisters, was any other mischief done to the house?....A The house was totally destroyed.

Q Did you hear any thing said of Mr. Hutton particularly?....A Yes, they said they would be revenged of Mr. Hutton because of the Court. He belongs to the Court of Requests.

Q Was there any other person besides yourself sat up to guard the house?....Yes.

Q Who?....A John Hemmings was?

Joseph Cresswell cross-examined by Mr. Clarke.

Q You work for Mr. Hutton?....A Yes,

Q What time was it exactly, as near as you can tell, that they came back the second time, and the prisoner with them?....About six o'clock in the morning.

Q Whereabouts?....A They came along the Turnpike road,

Q Where was you?....A I came with them down to the kitchen-door.

Q Did you go into the house?....A No, I did not; I and another stood to persuade them not to go in.

Q Give some account of breaking this window. The prisoner had a bludgeon in his hand and struck the window?....A Yes.

Q What part of the window?....A I cannot exactly say; they struck it any where, they did not mind where; the window was knocked out, and the frames broke to pieces.

Q Did

Q Did the prisoner do that?....A. He struck the glass.

Q Do you mean to swear that he was the man that struck the window?....Yes, he struck it with another.

Q Did this blow of the prisoner strike the frame out of the window?....A He was one.

Q But the blow the prisoner gave did not strike the window out of its frame?....A I mean to say that through his assistance it was knocked out.

Q. Other persons struck it as well as he?....A Yes.

Q. But you did not say so before?....A I said he struck it with another?

Q. Did you see him strike it more than once?....Q Yes, often.

Q. How many times?....A I cannot say.

Q Did it go out with the first blow?....A No.

Q Where was you after this window was struck in?.... what did you do?....A I went along the front of the house, after the window was out we proceeded into the house.

Q Where was you?....Close to the window by the stair-case.

Q Could you see what they were doing upon the stairs?A Yes, the prisoner was at the bottom of the stair-case.

Q Who was there besides, do you recollect?....A There were plenty, but I did not know any of them.

Q He was an old acquaintance of yours, I suppose?.... A I have known him this year or two.

Q He was an acquaintance of yours?....A No more than seeing him.

Q Did they throw the things out of the window you was looking at?....A I saw it done, and thrown out of the window.

Q How did he pull this stair-case down?....A He took his hands and tore it to pieces.

Q The prisoner did?....A Yes, and you will hear, I suppose, of some other persons.

Q How do you know that?....A I cannot tell, but there is no doubt but you will hear of other people.

Q But how do you know that, will you swear it?....A No.

Q You seem to be pretty active in this business; how do you know that we shall hear of other people; how can you

you take upon yourself to swear that?....*A* I will not swear it.

Q But you have sworn it. They did not attempt to meddle with you?....*A* No.

Q They let you be in peace looking on?.....*A* I stopped there till they fetched fire to fire the house.

Q What time was that?....*A* Near seven.

Q Before seven?....*A* Yes, but I cannot pretend to mention exactly, for there was never a clock, nor I had not a watch.

Q Was it or not before seven?....*A* I will not exactly say.

Q It began about six?....*A* Yes, as near as I can guess, I saw fire fetched, but who fetched it I cannot say.

Q You saw nothing of the prisoner after these bannisters of the stair-case were thrown out?....*A* No.

COURT. Was the house fired at last?....*A* Yes.

COURT. Did you see the prisoner bring any fire there?*A* No.

Q Did you ever see the prisoner afterwards?....*A* No, not till I saw him in Birmingham when he was taken up.

Q Did any thing pass between you and him at that time?....*A* No.

Q You said nothing to him at all?....*A* Not when I saw him afterwards.

Q You did not?....*A* No.

Q But you was with him before the magistrate?....*A* Yes, they put me into the room to see whether I knew him or not.

Q What passed?....*A* I said I remembered seeing him at Saltley; he said he did not know any thing about it. I said, do not you know me? he said, I think I have seen you.

Q Did not you tell him you would swear to him?....*A* No, I did not, to the best of my knowledge.

Q Do you mean to swear you did not say so?....*A* I shall not swear to it.

Q Upon your oath, did you, or did you not?....*A* I will not say that I did.

Q Did you mention Mr. Hutton's name at the time?*A* I cannot recollect that I did.

Q Did

Q. Did you not say you would go in, and ask Mr. Hutton whether you should swear to him or not?....A No, I did not.

Mr. Sutton. You told us of a conversation you had with Rice?....A Yes.

Q Did you know him at that time?....A Yes.

Q I think you say that the house was at last set on fire?
....A Yes.

Mr. Clarke. You are going into another examination.

Mr. Sutton. It comes out upon cross-examination that the house was completely destroyed by fire.

Mr. Willis. I beg pardon; it came out upon a question that my Lord asked.

Mr. Sutton. I will not put the question then.

Mr. Newnham. The counsel is perfectly correct in pursuing those questions which arise out of cross-examination.

COURT. Whether they proceed upon the cross-examination, or were omitted in the original examination, in a case of this nature the Jury are to hear the whole truth, and therefore I shall permit you to ask any question that you may originally have omitted.

Mr. Sutton. Before the house was fired was any damage done to the stair-case?....Yes, the windows and bannisters were totally destroyed.

Q. You have said that at the stairs there was no person that you knew except the prisoner?....A No, I recollect no other person.

Q But do you mean to confine yourself to the stairs, or that you did not know any other person about the house?
....A No, I do not say that.

Q Then you only mean to confine yourself to the stairs?
....A To the stairs.

JOHN HEMMINGS sworn.Q What are you?....A Servant to Mr. Hutton,

Q You were at his house in July last?....A Yes.

Q On the 15th?....A Yes.

Q Tell us what you observed there?....A On the 15th we were there moving the property, and we stopped all night to guard the house,upon the 16th the mob came.

Q Who do you mean by *we*?....A There were several, Cresswell and I, and others.

Q Between four and five in the morning the mob came?....A Yes, they came and they got into the cellar, and fetched up two barrels of ale, and huzzaing and crying church and King.

Q How many might there be?....A Four or five and twenty; they fetched two barrels of ale and bread and cheese, they drank what they chose, and threw the rest about.

Q Was Mr. Hutton at home at that time?....A No, he left home that morning between two and three.

Q Did they do any mischief at that time?....A No.

Q Did they go away then?....A Yes, as far as Saltley.

Q Did you see any thing more of them that day?....A Yes, they returned about six o'clock, as near as I can guess.

Q In what numbers might they come then?....A Thirty or more.

Q Did you know any of those that were there?....A Yes, I knew the prisoner for one.

Q What part of the mob did you see him in?....A He was in the mob when they came the second time.

Q Did you hear him say any thing?....A When they came the second time, they huzzaed and swore they would have the house down directly:....Cresswell begged they would not destroy the building and they should have what was in the house;they swore bitterly they would have it down.

COURT.....Did you hear the prisoner make use of that expression?....A Yes.

COURT....The prisoner had been applied to by Cresswell desiring they would save the house?....A Yes.

Q Did you see any of them do any thing upon that?A Yes, they began breaking the windows immediately.

Q Who?....A He was one.

Q In what way?....A With their bludgeons. They began breaking the kitchen window, then they went to the parlour window, and to the bannisters of the stairs.

Q Did you see them at the bannisters of the stairs?....A Yes, I did.

Q Who did you see there?....A This gentleman (pointing to the prisoner).

Q What

Q What did you see him do?....A Knocking the bannisters to pieces, and the window.

A Did you hear them say any thing respecting Mr. Hutton?....A Yes, they swore they would have the house down upon the account of the Court,

A Was it before or after the house was set on fire that the bannisters were flung out of the window?....A I was not there when it set on fire.

Q What time did you go away?....A Between seven and eight o'clock.

Q Was the prisoner or not active?....A He was.

Q Were the bannisters pulled down?....Yes, knocked to pieces, and thrown out of the window.

John Hemmings cross-examined by Mr. Willis.

Q Do you know a place called Ashted-Row?....A Yes.

Q How far is that from Mr. Hutton's house?....A Rather better than a mile, about a mile and a quarter.

Q Do you mean to say it is no more than that?....A No.

Q Are you certain it is not two miles?....A I am certain of it.

Q You told us you saw the prisoner at the bar first attempt to break the window?....A He did break it.

Q Did you ever see him before?....A Yes, many times.

Q Where?....A At Birmingham.

Q Where at Birmingham?....A In the street.

Q How long have you lived at Mr. Hutton's house?....

A I have worked for Mr. Hutton a year and a half.

A How long have you known the prisoner?....A I cannot say how long, but I remember seeing him many times in the street.

Q In what capacity do you live with Mr. Hutton?....A As a porter.

Q Do you live at Mr. Hutton's house in the country?

A No, I work at the house in town, but I do not lodge there.

Q Birmingham is a large town, and a very populous place?....A Yes.

Q And persons in the larger streets in Birmingham are constantly walking backwards and forwards like London?....A Yes.

Q And

A And still you mean to say that meeting a person in the public streets, whose name you did not know, you knew him?....*A* Yes.

Q What trade is he?....*A* Either a brick-maker, or something of that sort.

Q Why did you judge him to be a brick-maker?....

A Because he had a frock on marked with clay.

Q He always had a frock on marked with clay?....

A Generally.

Q These persons are generally disguised with clay in their faces,—now mind, I am sure you must have seen a great number of brick-makers thereabouts, therefore you must know they are generally pretty well splashed in the face?....*A* Certainly, sometimes.

Q Therefore, this man, whom you did not know but merely from seeing him in the streets, you recollect him,—that is your account?....*A* Yes.

Q Did you stay at the house all the while it was pulled down and burnt?....*A* No.

Q How long might you stay there?*A* From the time I came first, about four or five o'clock.

Q But I mean, when the mob came at six, how long did you stay?....*A* About an hour and a half.

Q In what part of the house might you be?....*A* The lower part of the house, at the door.

Q And you say more than thirty people attended?....*A* Somewhere thereabouts.

Q You must be under some considerable degree of alarm at that time?....*A* Yes.

Q The mob was about different parts of the house?....*A* Yes.

Q Therefore your attention was employed upon all the business the people were doing?....*A* Yes.

Q Did you know any other persons there?....*A* Yes.

Q Did you see the prisoner at the house before?....*A* Yes, several times that morning.

Q During how much time in the whole might you have an opportunity of seeing the prisoner?....*A* Pretty near an hour and a half.

Q Do you mean to say you was observing the prisoner all that time?....*A* Yes.

Q Do

Q Do you mean to say, and get credit with the Jury, that, though there were more people about the house, you observed that man the whole hour and a half?....A Yes.

Q Do you mean to say that for every minute of that time you saw the prisoner?....A Not every minute.

Q Then how much of that time did you see him?....A Sometimes in one part of the house, and sometimes in another.

Q I do not ask you that—but how much of that time did you see him?....A Three, four, or five minutes at a time.

Q And for how many times?....A A great many.

Q And from six o'clock till half past seven?....A Yes.

COURT....You saw this man during that hour and a half?....A Yes.

COURT....He continued there for the space of an hour and a half?....A Yes, I left him there when I left the building.

EVIDENCE FOR THE PRISONER.

George Rowell sworn.—Examined by Mr. Clarke.

Q Was you at Birmingham on the 16th of July?....A Yes.

Q Do you recollect seeing the prisoner that morning?....A Yes.

Q About what time?....A Between five and six.

Q Where was you with him?....A At Deritend.

Q Where at?....A I cannot tell.

Q A public house?....A Yes.

Q Had you any thing to drink there?....A Yes, he gave me a share of two pints of beer.

Q How long were you at this public house?....A About ten minutes or a quarter of an hour.

Q Where did you go to then?....A Up to Mr. Tart's at Deritend.

Q What did you go there for?....A A pint of beer,—Mr. Humphreys's servant said there was no occasion to buy beer, there was plenty to give away.

Q There you parted?....A Yes.

Q About what time?....A About six.

Q Do you know where Mr. Hutton's house was?....A No, I cannot say I do.

George Rowell cross-examined by Mr. Newnham.

Q I see you are the King's servant?....A Yes.

Q What time did you get to Birmingham?....I cannot tell.

Q But what day was it you saw the prisoner? what day of the week?....A Friday morning.

Q Was you there with your regiment, or any part of it?....A A recruiting party was there.

Q What regiment?....A The 19th regiment of dragoons.

Q At this public house where you had two pints of beer, who was present besides the prisoner?....A I cannot tell, there was somebody, I do not know what his name was.

Q Did you go together to the public house?....A Yes.

Q Where did you come from?....A We were going to see the ruins of Mr. Taylor's house?

Q Where did you first see the prisoner?....A I met him in Deritend.

Q How far from the public house?....A About a dozen yards.

Q You drank two pints of beer?....A Yes, a part of them.

Q How many people were there?....A Nobody but that other man and we.

Q Do you know the name of that other man?....A No.

Q How long have you been in Birmingham?.....A About eight weeks.

Q Are you a Birmingham man?....No, Northamptonshire.

Q Did you know the prisoner before?....A Yes, because he had been in the 10th Regiment that I came out of.

Q The Prince's Regiment that is now?....A Yes, the Prince of Wales's.

Q How came you to go up to Mr. Tart's and not go to the ruins?....A I saw the people at Mr. Tart's door, and did not like to be among them.

Q How far is that public house from Mr. Tart's door?....A I do not know, there is no sign.

Q But you can recollect how far?....A No, I cannot tell now.

Q You can tell now as well as then?....A No I cannot, we called there for a pint of beer; I asked him to go back and see the ruins.

Q Was that in the way to Mr. Taylor's house?....A I cannot tell.

Q Was you never there?....A No.

Q Where did you come from now?....A Birmingham.

Q Have you been there ever since?....A Yes.

Q Does Mr. Taylor's house lie in the road from the public house to Mr. Tart's?....A I cannot tell.

Q What is Mr. Tart, he is a constable, is he not?....A Yes.

Q Do you know him?....A I do not know him.

Q Then how came you to go there?....A To get a pint of beer, that was all.

Q Who paid for it?....A I do not know that any body did, unless Mr. Rice did.

Q Who was the person that told you there was beer enough to give away?....A Mr. Humphrys's servant.

Q What is his name?....A I do not know.

Q Who told you it was Mr. Humphrys's servant?....A A young lad that was here yesterday, Berridge.

Q How long did you stop at Mr. Tart's?....A It could not be above ten minutes.

Q Then you came away?....A Yes?

Q Had you a watch in your pocket?....A No.

Q You do not speak with precision to the time?....A No, I cannot justly, no further than that.

Q Who paid for the beer you had first?....A Rice and the other man together.

Q Near what public house was it?....A I cannot recollect.

Q Whereabouts?....A I do not know.

Q Nor how far from Mr. Tart's?....A No.

Q Nor how you came there?....A Yes, I went to see the ruins.

Q But you did not know the way?....A No.

Q How came you to think of going to the first public house in the way to Mr. Taylor's?....A Because I enquired.

Q Who did you ask?....A Rice.

Q How came you to ask him?....A I met him in the street.

Q He was not coming the same way that you was?....

A No, I met him.

Q Was he coming from Mr. Taylor's? A I don't know.

Q Did you ask him the way to Mr. Taylor's house?....

A No.

Q You told me you asked him?.... A I asked him the way.

Q Did he go that way to shew you as far as that was in the road to Mr. Taylor's house?.... A He did not say whether he would shew me or not.

Q Where did you go from Tart's?.... A To my quarters.

Q And there you parted, and did not know what came of him afterwards?.... A No.

Q And did not stop above ten minutes?.... A No.

George Mascall sworn, examined by Mr. Willis.

Q Where do you live?.... A At the corner house of Windsor-street at Aston.

Q In what line of trade are you?.... A Brick-maker and builder.

Q Do you know the prisoner at the bar?.... A Yes, I have known him two years.

Q Do you recollect seeing Mr. Rice at any time on the 16th of July last?.... A Upon Saturday the 16th of July last, between six and seven in the morning, or about half past six, my house-keeper was up, and I heard a great many people in the house making a riot, the house was full of people. I got up and put my things on as fast as I could.

Q You keep a public house?.... A Yes, I sell victuals and drink. I came down stairs hastily and saw the prisoner among them, they came in for refreshment; I thought they were going to knock the chairs and things all to pieces. As soon as the prisoner came in he snatched a stick from one of them, and swore they should not do me any harm; he stood with two sticks together. I fetched them nine quarts of ale, and some loaves and cheese amongst them; they asked me what I charged, I told them I would not charge any thing but for the ale.

Q Was any thing said or done by the prisoner to induce you to believe he was one of that mob, or against it? A Against it.

Q Why

Q Why?....A Because he snatched a stick out of one of their hands and stood in defiance to keep any of the mob from hurting me, and he staid with me till the mob were gone out, and they went to the right, and he to the left.

Q Then this was about seven o'clock? A Yes.

Q Which way does the right lead to?....A The right to Saltley, and the left against Mr. Hutton's house, and Mr. Hutton's house was at that time on fire.

Q Did you see the prisoner any more that morning?....

A The very same morning I saw him again going out of a barber's shop about half an hour after he left my house.

Q What is the barber's name?....A Blinkhorn, he is here.

Q Then you saw him again about half an hour after he left you?....Yes, but I did not speak to him nor he to me.

Q Did you ever see him any more that day?....A Yes, about two hours after near the black horse.

Q Where is that?....A In the town of Birmingham.

Q Was he alone, or with the mob?....A There were people passing to and against him, but I did not see any thing the matter.

George Masfal cross-examined by Mr. Newnham.

Q When the prisoner went out of the house you saw Mr. Hutton's house on fire?....A Yes.

Q Could you distinguish it to be Mr. Hutton's house?

A Every one brought the news, but it was plain enough to see it, and Mr. Taylor's at the same time.

Q But I am asking you about Mr. Hutton, you say you are sure it was Mr. Hutton's house?....A Yes, Mr. Hutton's house was on fire when he left me, and when he went away they turned to the right, and he to the left.

Q Tell me whether you could see Mr. Hutton's house from your house?....A Yes, very plain.

Q How far is it from your house to Mr. Hutton's?....A About a mile, it stands very pleasant and plain to my house.

Q A single house?....A Yes, with a garden round it.

Q You were alarmed at these people making a disturbance in your house, and tumbled out of bed as fast as you could?....A Yes.

Q Did you know the prisoner before?....A Yes.

Q And nobody else among them ?....A No.

Q He had been at your house frequently ?....Yes, eating and drinking.

Q He snatched a stick from one of them and said, damn your bloods, I will break your arms if you attempt to meddle with this man's property ?....A Yes; they frightened my wife out of her wits.

Q Then your acquaintance prevented them from doing any mischief ?....Yes.

Mr. WILLIS. You know Mr. Hutton's house ?....A Yes.

Q Was any other house burnt that lies in the same direction that that house does from Birmingham ?....A I really don't know.

Q This house stands by itself ?....A Yes, with a wall round it.

Q How long have you known the prisoner ?....A Upwards of two years he has worked for my brother-in-law.

Q He is a brickmaker ?....A Yes.

Q What sort of a character has he borne during that time ?....A Whatever he had to eat or drink he always paid me for very honestly. I never saw any harm by him.

William Windsor sworn, examined by Mr. Willis.

Q Where do you live ?....A At Aston.

Q You are a proprietor of several houses there ?....A Yes.

Q Do you know the prisoner ?....A Yes.

Q How long have you known him ?....A About two years.

Q What has been his character during the time you have known him ?....A It has always been very good.

Q You know Deritend very well ?....A Yes.

Q You know Mr. Tart's house ?....A Yes.

Q You know Washwood-heath, Mr. Hutton's house ?....A Yes.

Q Tell me the distance between Tart's house and Mr. Hutton's ?....A Two miles.

Q Is it no more ?....A No, it is thereabouts.

Henry Hawkins sworn.—Examined by Mr. Willis.

Q Where do you live ?....A At Aston near Vauxhall.

Q In what line of trade are you ?....A A Baker.

Q Do you know the prisoner ?....A Yes.

Q How long have you known him?....A About half a year.

Q What has been his character during that time?....

A I never heard any thing but that he was a hard working sober man; I believe he has done a good day's hard work for a master to satisfy him; he was a laborious man.

Mr. NEWNHAM. May it please your Lordship to favour me with a few words in reply.

Mr. WILLIS. I submit to your Lordship that my learned friend has no right to reply.

COURT. The Counsel for the prisoners have no further right than to cross-examine the witnesses....I should have no objection if any observations are necessary to elucidate or explain facts; but not without the consent of the counsel for the crown.

Mr. NEWNHAM. Your lordship mistakes, my learned friends puts it to me whether I have a right to reply in this case.

COURT. You have most certainly a right to reply upon the evidence.

Mr. NEWNHAM. If there had been no evidence at all I insist I have a right to reply upon the cross-examinations of my learned friend. There is no possible case to be put in which I, representing the Attorney General, am precluded from having the last word. I have a clear and a strict right, which I never will give up; but when I have said this I will leave it with your lordship, and will not reply.

SUMMING UP.

COURT. Gentlemen of the Jury, this is an indictment founded upon a different Act of Parliament from that which you have already considered. It is an indictment upon the Riot Act against the prisoner William Rice, for violently assembling with twenty other persons, and feloniously pulling down the dwelling-house of Mr. William Hutton, against the statute called the Riot Act.

Now, Gentlemen, that Act of Parliament provides, among other things, that if twelve persons, or more, are unlawfully assembled to the disturbance of the peace, that the Justices of the Peace, Sheriffs, and Under Sheriffs, and other persons therein named, shall read the Proclamation,

and if they don't disperse within one hour after that then they incur the penalty of felons. And it is also provided, that if any person so riotously assembled begin, even before the Proclamation be read, pulling down any church, chapel, meeting-house, or dwelling-house, they shall be deemed felons without benefit of clergy: you will therefore consider whether the prisoner at the bar is guilty or not.

Upon the part of the prosecution two witnesses have been called. The first is Joseph Cresswell, who tells you he was at Mr. Hutton's house as a gardener, a labouring gardener, taking care of any person's garden who should employ him occasionally, he was engaged in that service on the 15th of July. Mr. Hutton apprehending some injury to be done to his house, left his house on the morning of the 16th, and he desired this person to continue in the house and take all the care of it he could; he says he was up about half past four in the morning of the 16th of July. This is the time that he mentions as the commencement of the appearance of any mob. He says there came twenty or five and twenty (the exact number he cannot tell) at that hour of half past four in the morning, huzzaing and crying church and King for ever; when they came to the house they asked for liquor, he told them they should have whatever they desired; he would have fetched them liquor, but they would not accept it at his hands, but went down some of them into the cellar themselves, and brought up two barrels of ale out of the cellar; there it was drawn, let out into a pail, and they drank among them what they liked, and threw the rest upon the ground; they eat what they pleased, there was a quantity of bread and cheese in the house which was not sufficient for them. He says he was endeavouring to pacify them, he procured more, and at length was fortunate enough to persuade them to depart, and they did not at this time do any mischief. They afterwards returned in greater numbers. At the outset of the business the prisoner was not one of the party. Observe that, Gentlemen, he was not of the first party, but he says he returned with them; and according to his account of him, he seemed to be the ringleader of those that came the second time, there were no other persons equally active with himself.

The prisoner seems to have been the first active person upon the second appearance, which was about six in the morning; he had no watch, nor does it appear that there was any clock to have recourse to, but according to the best of his recollection, it was about the hour of six; he says the prisoner came with them, and another person, who seemed to be ring-leaders; they were larger and more in number than had appeared at first, they had collected more persons than were there originally. He says when the prisoner came up first, he spoke to him and begged that they would do no damage to the building, as to any thing that could be had for their refreshment, eating and drinking, they might go into the house and take whatever they pleased. He said to the mob in general, do not destroy the building take what you will in the house; the prisoner took upon him to be the spokesman, and said they would be damned if they would not have it down. So that, gentlemen, these persons came seemingly with a determined resolution not to be satisfied with any thing they could get to eat and drink, but that their purpose was to destroy the house, and they assigned a reason for it, "because of the Court," what that means, I do not know exactly, but the explanation that I received, as far as it strikes my mind, is that Mr. William Hutton is an officer in the Court of Requests in or near the town of Birmingham, what the business of that court is, or how a mob of people are affected by it, you, Gentlemen, will know much better than I do; but this was the ostensible reason for attacking Mr. Hutton's house rather than any other person's. He says they then carried their threatening into immediate execution; for he went and knocked out the glass and broke the wood-work of the windows. It does not appear whether the door was open or broke—they went in, and he and that person with him, who was equally active, began upon the bannisters of the stairs, and the prisoner at the bar first broke the bannisters of the stairs, and threw them out of the window, and by that means encouraged the mob to commit further depredations to the destruction of the whole of the house. Fire was at last introduced, to the complete destruction of the house. All these persons had weapons of offence in their hands, according to what this

witness says, they were all armed with bludgeons. He swears positively to the person of the prisoner, he says he knew him, and saw him destroy the house in the manner I have mentioned, throwing the bannisters of the stairs out of the window; there were about ten persons in the house, and about twenty round the house. The house was totally destroyed; and they swore they would be revenged of Mr. Hutton because of the Court. Gentlemen, if what he says is true, that he stood at the door during the whole time being desired by Mr. Hutton to attend there for that very purpose, the prisoner at the bar was the most active amongst them; he says that he saw him for the space of an hour and a half, and that he saw him in different parts of the house; he was the person that first began this transaction; and he says he observed every person there occasionally, but particularly this prisoner at the bar. The house was destroyed, he says, about the hour of seven, but the fire was introduced before it was totally destroyed, but that previous to the introduction of the fire, the windows had been broke, and every sort of damage had been done. Gentlemen, you observe he was placed there for the purpose of observing what might happen, he gives them leave to eat and drink, and do what they will, but recommends it to them to preserve and not destroy the building; it was his object to preserve the house.

Gentlemen, John Hemmings is the other witness; he serves occasionally at Mr. Hutton's house at Birmingham, and is only now and then at the house at Aston: and he says he was on the 15th of July, apprehensive of the destruction of Mr. Hutton's house; for upon 15th of July this servant was at his house moving the property, and Mr. Hutton himself removed from that house about two in the morning, probably in order to prevent any personal injury he might receive from the mob. He says they came about six in the morning, and went into the cellar; there to the number of four or five and twenty, they fetched two barrels of ale and some bread and cheese; they drank what ale they chose, and the rest they threw about. They did not do any mischief at that time, but went away as far as Saltley, or something of that kind. They returned again about six o'clock; the first time they came
it

it does not appear that any mischief was done. He says that a number of other persons (swearing positively to the prisoner) came with them this second time, huzzaing and crying, church and King, and saying, they would have the house down, and he heard the prisoner say they would destroy the house directly; so that the testimony of Cresswell seems to be confirmed by this witness without any variation.

Gentlemen, he says the prisoner was among the mob, that he was huzzaing, and saying he would have the house down, and he heard the prisoner say they would destroy the house directly. He says that Cresswell begged that the house might be spared; they paid no attention to any recommendation of his, but began breaking the windows directly, and the prisoner was one of them; that then they went into the parlour, and he saw the prisoner in the house, break the bannisters of the stair-case, and throw it out of the window. So that the testimony of Cresswell is confirmed by the evidence of Hemmings. And, Gentlemen, you will perceive that this man had particular occasion to attend at this time, to preserve his master's property by his orders, and he was there to protect that property at this time when this mob was assembled.

He was asked, upon his cross-examination, how far Ashsted-row was from Mr. Hutton's; this was to lead to the evidence given on the part of the prisoner, and I dare say, Gentlemen, you know very well; in his idea it is a mile and a quarter. He was examined how he came to be so particular with respect to the prisoner, not having given any evidence or mentioned the names, though I believe he said he did know the names of others; he said he knew the prisoner. Had he any acquaintance with him, or any reason for distinguishing him from the rest of the persons collected? He tells you he had seen the prisoner many times in Birmingham; that he appeared to him to be a brick-maker, or one of the bricklayers, or a labourer in the business of making bricks; he had no acquaintance with the prisoner, he had no conversation with him, but that he had frequent opportunities of seeing him passing between Birmingham and Mr. Hutton's country-house, taking him from his dress to be a brick-maker,

maker, and recollected the prisoner merely from his appearance and seeing him in the street. He staid at the house an hour and a half, and then went away; he stood near the door of the house, where Cresswell says he was very active at the outset of the business, and there he observed the prisoner for an hour and an half, which was the whole of the time he was there, from six till half past seven, and he saw the prisoner transacting this work in different parts of the house, and when he retired from the house he left him there. I believe Cresswell staid a considerable time longer, he staid till the house was down.

Gentlemen, this is the evidence for the prosecution.— In my apprehension if the witnesses speak truth, if you give credit to them, it brings the case home, and affects him with the charge with which he stands indicted. You will judge whether the evidence given on his part makes any alteration, so as to destroy the force of the evidence on the part of the prosecution.

George Rowell is the first witness....He appears to be in the light dragoons upon a recruiting party, near Birmingham. He says that between five and six in the morning he saw the prisoner at Deritend; that he was going to see the ruins of Mr. Taylor's house, which had been before burnt down; that not knowing Mr. Taylor's house, he had the accident to meet with the prisoner, who instead of following the intention which he set out with, he contracts an acquaintance with the prisoner whom he never knew before —

Mr. *Clarke*. I beg your Lordship's pardon....they had been in the same regiment together before.

COURT. That I had omitted, and it is material to be sure; because it afforded an opportunity of his making an acquaintance, and naturally led them to go to a public-house; they go to this public-house, and drink a share of two pints of beer together, and then they part, and he left him at the house of one Tart, who lives at Birmingham; and this was about the hour of seven. Now, Gentlemen, if that was true, it is very material; he says about six he left him at Tart's door, you can judge whether that was possible, supposing he says true, that he did meet him there, whether he could go from Tart's door and be at
Mr.

Mr. Hutton's house at the time the other witnesses speak for, the other witnesses say that this second meeting at Mr. Hutton's house was about six in the morning, and Rowell says he left him at Tart's house about six; therefore, if that be the case, it was impossible, as the distance between Mr. Tart's and Mr. Hutton's house is three miles and upwards. He says that he was with the prisoner about the space of ten minutes. I think, Gentlemen, I am correct in that, though I omitted to take the evidence with regard to their acquaintance; that they were together about ten minutes or a quarter of an hour; Rowell says it was between five and six in the morning when they met, and they staid ten minutes together, so that they might be twenty minutes, but there is no certainty; the time is not precisely ascertained, and you must fix it in the best manner you can.

George Mascall is the next witness, who is a publican, and lives at Aston and has known the prisoner two years; he says about half past six in the morning upon the 16th of July, the prisoner came to his house. So this, Gentlemen, carries it beyond the last witness. Aston is at the distance of two miles from Mr. Hutton's. That at about half past six (though the time is not precisely ascertained) the prisoner came with a number of other persons into his house, that he hastily got out of bed, came down stairs, and found his house full, he saw the prisoner there, and the prisoner so far from being likely to encourage a mob to do any thing of this sort, he took a stick from one of the persons, and threatened to strike them, if they attempted to do any injury to the publican's house; and he thought he was there rather as a party against the mob, than for them; they had nine quarts of ale, which must have taken up some time. He says that when they left his house, the mob went to the right, and the prisoner to the left; so that the prisoner acting this way, could not at the time the witnesses for the prosecution mention, be at Mr. Hutton's house, and he saw him afterwards come out of a barber's shop. Therefore, Gentlemen, if the damage to the house was done from about six o'clock till half past seven, as the witnesses for the prosecution say, an hour and a half or thereabouts, it is not possible, as I conceive, if the testimony

mony of Mascal is true, that the prisoner could be at Mascal's house, left the mob, and went away, and at the same time have been at Mr. Hutton's house doing those acts for which this prosecution is brought against him. He says he thought the prisoner came there with an intention to prevent any mischief. He says Mr. Hutton's was on fire at the time the prisoner was at his house; if that be true, it was not possible the prisoner could be there.

Mr. Windsor is called in order to prove the distances between those places, which I dare say, you very well know. He says it is two miles distance between Mr. Hutton's house at Washwood Heath and Mr. Tart's house at Deritend, which is the place where the soldier and he drank together.

Henry Hawkins has known the prisoner about a year and a quarter; he has heard he is a laborious man, and did a good deal of work, and had a good character.

This, Gentlemen, is the whole of the evidence on the part of the prosecution and for the defendant. If you are of opinion the evidence for the defendant has any weight, and that the facts they speak to happened at the time they mention, it will be impossible to conceive but that the two witnesses for the prosecution have mistaken the man, and that he was not concerned in the demolition of this house. On the contrary, if you believe that the evidence on the part of the prisoner is not to have credit given to it, and that they are mistaken in not ascertaining the times with precision, you will find him guilty.—However, Gentlemen, you are at liberty to judge upon the whole of the subject, whether it is your duty to convict him or not.

NOT GUILTY.

ROBERT

ROBERT WHITEHEAD,

For pulling down the Dwelling-house of William Hutton.

NAMES OF THE JURY.

James Aspinall, Birmingham
Benjamin Sutton, ditto
John Merry, ditto
John Whynal, .
Henry Parker, Birmingham
John Clarke, ditto

William Cove,
Benjamin Dadley, Loxley
Richard Cole
—— Haslewood, Hampton-Lucy
John Hitchcock, Egde-Hill
John Trahern, Birmingham

Mr. NEWNHAM,....**G**ENTLEMEN of the Jury,—
 I shall not trouble you upon this prosecution above two or three minutes,....The present unfortunate man at the bar stands charged with being assembled with a great number of other persons to the number of twelve or more, in a riotous and tumultuous manner, pulling down or beginning to pull down and demolish the dwelling house of Mr. William Hutton.My only reason for troubling you at present is this, that two of the witnesses who will be produced to you in this prosecution are two who were in the last. I purposely avoided, and I wished my learned friend studiously to avoid, bringing any other person's name in question when the trial related solely to the then prisoner at the bar; it would have been improper in me to have done it, and we gave the learned gentleman a caution for which there was hardly any occasion.

I submit this prisoner's case to your justice, knowing that you will do your duty upon hearing the evidence.

EVIDENCE FOR THE CROWN.

Joseph Cresswell sworn.—Examined by Mr. Coke.

Q You live at Birmingham?....A Yes.

Q Was you employed at any time on the 15th of July by Mr. Hutton to do any thing?....A Yes, to put his garden in order.

Q On the evening of the 15th of July, what happened?
....A Nothing more than getting some of the goods out of the house, and next morning, the 16th, Saturday morning, about half past four o'clock the rioters came.

Q How many in number?....A About twenty or twenty five.

COURT. Had they any thing in their hands?....A Bludgeons.

Q What did they do when they came up to Mr. Hutton's house?....A They demanded liquor; I offered to fetch them what they liked, they would not accept of my fetching it; they went into the cellar and fetched out two barrels of ale, they drank what they liked of it, and knocked the rest about; they eat the victuals that were in the house.

Q After that what time did they return?....A In about three quarters of an hour, between four and five in the morning, about six o'clock they returned.

Q And there were thirty in number?....A Yes, thirty or more.

Q You say it was about six o'clock; had you a clock or watch?....A No, I had not.

Q Look at that man, did he come with them the second time?....A He did, they began breaking the kitchen windows.

Q Did you say any thing to them?....A I spoke to Rice; I remarked the prisoner by having his hair down his back when he had been used to having it tied; I perceived them in the turnpike-road, and this man was knocking out the windows at the front next the turnpike-road; I saw him breaking the windows and the window-frames at the front of the house next the turnpike-road.

Q What did you do then?....A Immediately Hemmings stood by the wall with two guns in his hands, the prisoner saw him, he came running and took the guns out of his hand, one of them, and the other fell down; he immediately took the butt end of it and knocked him down, for my part I dared not go near him; he continued beating him till a person came up and rescued him, and swore he would kill him.

Q After that what became of the prisoner?....A He returned with the guns to the front of the house.

Q. Did you go after him?....Q Hemmings ran away; I returned into the garden to see what they meant to be at next, I saw the prisoner again in the garden, and he struck me twice upon my left arm.

Q. Did you see any thing more than that?....A I immediately ran and he after me, but I saw him no more.

Q Was the demolished or not?....A It was not set on fire, but was demolished, the windows and frames were knocked out.

Joseph Cresswell cross-examined by Mr. Clark.

Q It was demolished;....What you have been reading the act of Parliament?....A No.

Q Was it not burnt?....A No, not at that time; the windows were knocked out of the frames.

Q What sort of windows?....A Sash windows.

Q You say you saw the prisoner at the bar coming up with the mob?....A I saw him in the mob.

Q He is a friend of your's?....A No.

Q No acquaintance?....A No.

Q But you knew him because his hair was untied?....A I had seen him many times.

Q You have your hair tied sometimes, I suppose?....A No, it does not become me.

Q How far was you from this man, how long was that before you saw him at this window you are speaking of?....A At the back front.

Q How long was it after this first meeting with them that you saw them there?....A I cannot exactly tell.

Q Was it half an hour?....A I cannot tell.

Q But give us some account, was it half an hour, three three quarters of an hour, or an hour?....A It was not an hour.

Q Was it half an hour?....A I do not suppose it was.

Q Where might you be after you saw this man come with the mob, which way did you go?....A Into the turnpike-road.

Q Who began upon the kitchen window?—Rice did.

Q It was not the prisoner?....A No, nor I did not see him do any thing on that side of the house.

Q Then the first time you saw him afterwards was the front of the road where the kitchen window is?....A No, that is at the end, this at the side.

Q What did you see him do?....A *Paling* at the windows with his bludgeon.

Q What might be done to the windows with this bludgeon?....A The window frames were knocked to pieces with the bludgeons.

Q Were the window frames taken out?....A The glass was knocked to pieces.

Q You saw the prisoner strike them; but I want to know what this knocking to pieces was?....A They were knocked out.

Q How?....A They were paled to pieces.

Q What is that; splintered you mean?....A Yes.

Q That was all you saw him do, you say?....A No, I did not say that; I saw him do no more to the house.

Q You spoke afterwards of his taking a gun from Hemmings?....A Yes.

Q Was there any body else that attacked Hemmings?....A No.

Q A bold fellow; so he let an unarmed man take both the guns from him?....A He was not capable of standing against him.

Q How far was you from him?....A Seven or eight yards.

Q So you without a gun and your friend with two guns, could not stand against this unarmed man, and neither of you dared advance upon him?....A He stood about seven yards off me.

Q So he took away the guns, and beat him and beat you?....A Yes.

Q Pretty fellows to guard a house! how many more guards had you?....A I do not know, there were several.

Q Name as many as you can recollect?....A Hemmings, and Davis, and Samuel Mason, and some others that I do not know.

Q Was there one of the name of Moulds?....A I do not know.

Q And several others?....A Yes.

Q And all as brave men as you?....A They may be better men than me.

Q Are they here?....A Yes.

COURT.He had his hair untied at this time?.... A Yes.

COURT.....Had you any acquaintance with him before ?
....A No.

COURT.....You did not know his name before ?....A No.

COURT.....You have seen him in the town with his hair tied ?....A Yes, I have seen him several times before.

Mr. CLARKE.....You did not see him do any thing till above a quarter of an hour after they attacked the kitchen ?....A I did not.

Q Was it a quarter of an hour ?....A I cannot say.

Q Half an hour ?....A I cannot say.

Q Form some judgment ?....A I cannot.

Mr. COKE.....You were asked how many persons there were to guard the house besides you, and you have named three ?....A Yes.

Q When the prisoner took the guns away from Hemmings how many persons might there be near ?....A A great number.

Q Near him ?....A Yes.

Mr. CLARKE.....People who were not rioters ?....A Yes.

Mr. COKE.....But how many of the mob do you think were near him at the time he took away the gun from Hemmings ?....A I cannot say.

Q About the house at the time ?....A I suppose between twenty and thirty.

Q How far from the house when he took away the gun from Hemmings ?....A About twenty yards.

JOHN HEMMING *sworn*.....Q Do you remember being at Mr. Hutton's house upon the morning of the 16th of July ?....A Yes.

Q What was your business there ?....A To take care of the property.

Q Who employed you ?....A Mr. Hutton.

Q Tell me if that morning any persons came there, and to what number ?....A About twenty-five.

Q What time did they come ?....A Between four and five.

Q In a riotous manner or a peaceable one ?....A Riotous, huzzaing church and King.

Q Tell us what part of the house they came to when they first came there ?....A The first thing they did was to go into the cellar and fetch two barrels of ale out.

Q Which part of the house did they enter?....A There were two fronts to the house, it was at the lower front of the turnpike road.

Q Was that the part of the house they went into at first?....A Yes, and fetched two barrels of ale out of the cellar.

Q How many of them went into the cellar?....A Three or four.

Q What did they do with the ale?....A Some they drank, and the rest they threw about.

Q How long did they stay that night?....A They stopped pretty near an hour I suppose.

Q The first time?....A Yes.

Q Tell me whether you saw the prisoner among them?....A I did.

Q The first time?....A Yes.

Q Had you known him before?....A I cannot say I had.

Q I do not mean whether you knew his name, but had you never seen his person before?....A I cannot say as I had.

Q I think you said they went away in about an hour?....A Yes.

Q How long was it before they returned again?....A About six o'clock.

Q When you say six do you mean to be precise as to the time?....A It was as nigh as could be six o'clock.

Q Do you carry a watch?....A No.

Q Was there any clock in the house?....A No, but we were at the public house not many minutes before, and we saw what o'clock it was then.

Q how many were there came the second time?....A Twenty or thirty I suppose.

Q Did they come in a peaceable manner or in a riotous one?....A Riotous.

Q What did they do?....A They began breaking the windows.

Q Which side of the house did they first attack?....A The lower part of the house next the garden, the opposite side of the turnpike.

Q Did you see the prisoner on that side of the house?....A Yes.

Q Did

Q Did' you see him do any thing?....A I saw him breaking the windows on that part of the house.

Q What with?....A A bludgeon.

Q What sort of a bludgeon?....A A thickish one.

Q Tell us how he broke the windows?....A By hitting them as hard as he was able.

Q Do you mean to say that he broke the windows only, or that he struck the frames as well as the glass?....A He broke the frames.

Q Which windows were they, were they the windows of the ground floor?....A The lowermost windows.

Q Were the others so high he could not reach them?....A Yes.

Q So that the force was used to the ground windows?....A Yes.

Q And on that side of the house opposite to the turnpike?....Yes.

Q Where did you see the prisoner after this?....A In the house, breaking the banisters of the stairs.

Q Wooden banisters?....A Yes.

Q What with?....A A Bludgeon.

Q Did you see him any where else?....A Yes, after that, at the front of the house against the turnpike-road.

Q What was he doing there?....A Breaking the windows.

Q What with?....A bludgeons.

Q Do you mean the glass or the frames?....A Both.

COURT....This was the second time?....A Yes.

Q Now tell me, when you saw the prisoner doing all this mischief did you say any thing to him?....A No, I was then out upon the turnpike-road with two guns in my hand, and he saw me with the guns in my hand and ran out.

Q Was that the time when he was breaking the windows on the turnpike-road side of the house?....A Yes.

Q After he had been doing the mischief on the other side, and on the inside of the house?....A Yes.

Q Were the guns charged?....A Yes.

Q Tell us, when he came up to you what he did?....A He wrenched one of the guns out of my hand, knocked me down with it, and repeated his blow two or three times; when I was down he swore he would kill me, a

person being by, said for God's sake do not kill him, and he got hold of the gun.

Q Who did?....A The person who stood by stopped it from shooting of me as I lay upon the ground, that was the last I saw of him.

Q Attend to this question I am going to ask you.— You have given us an account that you had an opportunity of seeing him upon the farther side of the road from the Turnpike, you saw him in the house, you saw him when he was breaking the windows and the bannisters, and afterwards by the turnpike; now can you venture to swear positively that the prisoner at the bar is the man?....A I can.

COURT.....When you saw him was his hair as it is now, or queued up?....A As it is now, loose upon his back.

John Hemmings cross-examined by Mr. Willis.

Q If I understand you right you looked in at the windows and saw the prisoner breaking the bannisters?....

A No, I did not; I said I saw him breaking the bannisters through the door.

Q Was Cresswell near at that time?....A I cannot say he was in fight.

Q Where was he at that time?....A I cannot tell.

Q You did not see him?....A No, not at the time he was breaking the bannisters of the stairs.

Q Was Rice there at that time?....A Somewhere in the building.

Q You told us Rice was pulling down the bannisters upon the last trial?....A Yes.

Q If Rice pulled down the bannisters how could the prisoner do it?....A He began at the bottom and then ran up stairs.

Q So part was done by the one, and part by the other?....A Yes.

Q You did not see the whole?....A No.

Q You stood upon the turnpike-road, and your guns were there taken from you?....A One of them was, and I was knocked down with it.

Q And the prisoner at the bar was then breaking the windows?....A He came from that and took the gun from me and knocked me down.

Q Now Creffwell told us, when he came to you to take the guns he was twenty-five yards from the house?....A I do not know but he might.

Q If Creffwell said he stood twenty-five yards from the house when he came to you to take the guns from you, he said wrong of course, he must you know?....A He stood at the windows.

Q How long might this be after the mob came the second time?....A No great while.

Q Was it half an hour?....Q I cannot tell justly, it might be between a quarter and half an hour.

Q When those guns were taken from you, in what attitude was you?....A I stood in the road with one in each hand, he took one of them from me and knocked me down.

Q How long had you been placed there?....A Four or five minutes.

Q Did you present your gun at any body?....A No.

Q Will you swear that?....A I will.

Q You will swear you did not present your gun at any person that morning, and particularly at the time it was taken from you?....A I will.

Q There were many other persons about the premises who were not rioters?....A There were.

Q Many persons besides rioters looking on?....A There were.

Q Can you tell me who were the persons besides yourself who guarded the house that night?....A Creffwell was one, William Davis another, and Mason another, and several others.

Q Did you ever hear their names?....A I cannot recollect.

Q How many more might there be that you have not mentioned?....Four or five more.

Q Should you know their names if you hear them?....A Yes.

Q Was a man of the name of Moulds there?....A Yes.

Q Did he guard the same part of the house that you did?....A Yes.

Q Then he must have seen every thing that passed with regard to these guns?—A I cannot say that he did, because he was upon the lower part of the house.

Q Was you sober at this time?....A I was.

Q Do you mean to say you had drank nothing?....A No.

Q How much had you drank?....A About a pint or a pint and an half of liquor, or it might be thereabouts.

Q What liquor might it be?....A Ale.

Q You cannot tell what quantity?....A I won't swear justly to the quantity, because we did not measure it so exact.

Q Did you drink nothing else but ale?....A No.

Q Mr. ——— Was you sober at the time you saw the transactions of that man, of which you have given this account?....A I was.

WILLIAM DAVIS *sworn*.....Q Was you at Mr. Hutton's house the 16th of July?....A Yes.

Q What was your business there?....A I was at work there for Mr. Hutton, and had been about a fortnight or three weeks.

Q The 15th of July?....A Yes.

Q Was you there all that night?....A Yes, we helped to carry the things away, and stopped there all night.

Q Did any thing happen that night?....A No.

Q In the morning?....Yes, between four and five the mob came, as nigh as I can guess; they came and demanded liquor, and what ale and beer there was in the cellar, and bread and cheese, and they eat it, and when they had drank enough they threw the rest away; they would have eat more if they could have got it; we persuaded them to go away, and they stopped away about three quarters of an hour.

Q Did they come again?....A Yes, about half past six, or thereabouts.

Q Had you any watch or clock to guide you at this time?....A No.

Q Then did they come again as many or fewer in number?....A More.

Q In a peaceable manner, or riotously?....A Riotously; they came hallooing.

Q Was there any person that you can speak to, that you know?....A Yes, I saw Robert Whitehead there.

Q Look at the prisoner?....A That is the man.

Q Did you see him do any thing?....A I saw him go into the house as soon as he came, and break the windows.

Q What with?....A With a stick that he had in his hand; and I saw him pull down one or two of the banisters of the stair-case; and he proceeded up stairs, and I cannot tell what he did up stairs, I went on the other side of the house.

Q Did you see the prisoner there then?....A No, he was up stairs.

Q What damage was done to the house?....A All the windows were broke; he was up stairs then, and they were throwing things out of the window; I saw them throw a bed curtain-rod out of the window, I went to take it up, and Whitehead says "damn your eyes, what are you going to do with that," and struck me; I was struck several times, but I am sure the prisoner was the man that struck me first.

Q Where was this?....A On the front side of the house, next the turnpike-road,

Q Out of the house was it?....A Yes.

Q What became of the house afterwards?....A They began to demolish it as fast as they could, and some of them set it on fire, but I cannot say who it was.

Q Did you see Hemmings there?....A Yes.

Q Did you see him there with the guns?....A Yes.

Q Did you see any thing happen to him at that time?....A No.

Q Did you see Cresswell there?....A Yes.

Q Did you see any body strike Cresswell?....A I saw Whitehead strike him with a gun.

Q Do you know where he got that gun?....A I do not know where he got it.

William Davis cross-examined by Mr. Clarke.

Q You was a guard set to watch this place?....A Yes.

Q They came at half after six?....A Yes, the second time.

Q Did you see them as they came up?....A Yes.

Q Did you see the prisoner then?....A Yes.

Q Where was he?....A I saw him coming along by the road.

E 4

Q Whereabouts?

Q Whereabouts?....A Hard by the house.

Q Who was with him?....A The rest of the mob.

Q Whereabouts was he?....A I suppose there might be fourteen or fifteen before him, he was not the first man, but he was with them.

Q Where did he go first?....A Strait into the lower part of the house.

Q In at the door?....A Yes; there was a window upon the left, and a stair-case window upon the left, and he went and broke the window upon the left.

Q What window?....A The parlour window.

Q Did you see the kitchen window?....A Yes, but I did not see him break that.

Q When was that broke?....A That was broke first.

Q Where was he then?....A He was coming down to the lower part of the house; the upper front of the house lies higher than the lower front, and this man was coming down to the lower front from the upper front, I saw him come down by the kitchen window.

Q Was he at the kitchen window when it was broke?A He was coming by it at the same time.

Q He was not standing by it?....A No.

Q You saw him go up stairs?....A Yes.

Q Where did he go to?....A Into some of the rooms up stairs I suppose.

Q You did not follow him?....A No.

Q You saw him do nothing up stairs?....A No.

Q Afterwards you saw him out of the house?....A Yes.

Q When he struck you?....A Yes.

Q Where was you at that time?....A Upon the green walk before the lower front of the house.

Q Had you any thing in your hand?....A I was taking the curtain rod out of one of the mob's hands.

Q Mr. — He came up to you while you was taking the rod from the other man?....Yes, and then it was that Whitehead came up to me, and said, Damn your eyes, what are you going to do with that.

Samuel Mason, sworn.

Q What are you?....A A gardener.

Q Was you at Mr. Hutton's house upon the 16th of July?....A Yes.

Q How came you to be there?....A I had been at work at Mr. Hutton's on the 15th, we sat up all night, me and several more of us by Mr. Hutton's orders.

Q Did any thing happen that night, or the next morning?....A We expected them that night, but they did not come till the next morning about four or five o'clock; when they came first, they came huzzaing into the house, and crying church and King for ever; and in this manner they came and demanded drink, and what there was in the house, and there were some of them told them they would go and fetch them any thing out of the cellar there was, and desired them not to demolish the building, and they would not allow that to be done, but they went and drew what ale there was. Cresswell was at work with me, he went over to a public house, and fetched a loaf and nearly half a cheese.

Q But did they do any mischief that night?....A No.

Q Did they go away after they had eaten and drank what they liked?....A Yes, they made away with all the victuals, but they did not drink all the ale, but they threw the rest away.

Q How long did they stay away?....A They went up to a place called Saltley; I never was at the place before.

Q How long had they been gone?....I suppose about half an hour.

Q Did they return again?....A Yes, and came to the front of the house, and this Cresswell and Hemmings were at the door, and they talked to some of them, but I did not hear that; and in less than a minute or two, I heard the windows break.

Q At that time was there any body that you knew?....A. No, not one that I knew by person.

Q When did you first see any body that you knew?....A. Not till I heard the man's name I knew him.

Q What man?....A The prisoner.

Q What did you see him do?....A Between six and seven, I saw him at the front of the house, next the turnpike-road, breaking the windows with a stick as fast as he could.

Q How far was Hemmings off from the house?....A Two or three yards off.

Q Had

Q. Had Hemmings any thing in his hand? A. Yes, two guns; the prisoner was demolishing the windows as fast as he could, and he came and got over the wall, and laid hold of one of the guns that Hemmings had got, and struck him with the butt end of it, and knocked him down to the ground, and swore he would kill him, and struck him two or three times after he was down; after he had struck him in that way, a man cried out, for God's sake, don't kill him; for he was cocking the gun to shoot at him.

Q Did you see any thing else?.... A He stopped him from that; and that is all I have to say. Hemmings got up and made his escape as fast as he could, and I did not see him any more for two or three weeks.

Q Upon the whole, did the prisoner appear to be active in the destruction of the house?.... A Yes.

Samuel Mason cross-examined by Mr. Willis.

Q At the time he was cocking the gun where was Hemmings?.... A Lying upon his back near the road.

Q Upon his back?.... A I cannot say; he was trying to make his escape.

Q What, upon his back?.... A I cannot say he was upon his back; he was upon the ground.

Q What is this wall you are speaking of?.... A. A wall round a shrubbery before the house, a plantation of trees.

Q If I understand you, you said Whitehead came over that wall?.... A Yes.

Q Then he must have been in the shrubbery?.... Yes, he came out of the shrubbery.

Q That was the first time you saw him?.... A That was the first mischief I had seen him doing.

Q He was taking the gun from Hemmings, was not he?.... A I cannot pretend to say he was there the first time of coming, the second time he was.

Q. How near was you to Hemmings?.... A Eight or ten yards.

A He took the gun from Hemmings?.... A Yes.

Q If he had chose it he might have killed him then?....

A He struck him with the butt end of it.

Q. But did not cock the gun then?.... No.

Q When

Q When did he cock the gun?....A He tried to do it.

Q How do you know he was trying to cock it, when you say he was taking it away from Hemmings?....A He had took it away, and was attempting to cock it.

Q Then what prevented his cocking it?....A. A man that was there.

Q Who?....A I do not know.

Q Was he one of the rioters?....A I suppose not.

Q What did that man do to prevent his cocking the gun?....A He laid hold of him, and begged he would not kill the man.

Q You was ten yards off?....A Yes, I was nigh enough to hear them talk.

Q If you was within such a distance as to hear what was said, did not you hear Whitehead say, I will take the gun from you, you will hurt the mob with it?....A I did not hear any such thing.

EVIDENCE FOR THE PRISONER.

James Moulds, sworn, examined by Mr. Clarke.*

Q Was you employed as one of the guards at Mr. Hutton's house when it was destroyed?....A Yes.

Q Was you there when the mob came the second time?....A Yes.

Q Look at the prisoner; did you see him there when they came the second time?—A Yes.

Q Tell us what you saw?.....A The second time I met the prisoner; I talked to him a great deal upon the subject, and he seemed to be very attentive to me; and I asked him (for the second time I was in a very great passion, I said) what the devil do you do with them now?.... Says he, I have been trying to get them away, but I cannot. I led him to the front of the house; we walked

* This James Moulds was one, of about ten people, which Mr. Hutton hired to protect his house on Friday night. When the mob came he joined them, robbed the garden, regaled himself with cherries, and destroyed the trees. He finished his repast, by his own confession, with sweatmeats, and took some pots away. When the riots were over, he was the man who informed against Whitehead as a ringleader, described his person, name, trade, and place of work, and was the sole cause of his being taken.

backwards

backwards and forwards for sometime; in the mean while the windows were knocked to pieces (by who I cannot tell, my attention was then towards the prisoner) when we had walked backwards and forwards some time, we went behind the house; there is another green,—we walked backwards and forwards there; I begged him to go and assist me, and do our endeavour that they would not burn the house; accordingly he did. I knew the man some years before, and he listened very attentively, and helped me in every respect whatever.

Q Did you see any guns?....A Yes, in the first place, the men that were watching the house, had five guns; they agreed in the morning that the guns should not be used, but if fair persuasions would not take the mob away the guns should be hid when the rioters came. The second witness, Hemmings, had three guns in his possession, and stood trotting about in defiance of the them; they by force took them from him, and went to try the cock of one, I immediately gave the alarm, they were all charged. What to do about the guns, I did not know; I appealed again to Whitehead, as he came with them; I said, for God's sake, help me to get the guns away, or there will be mischief done. The prisoner by a great deal of persuasion did get the guns; they were laid across where the sun-dial used to stand, they were laid there, Whitehead would not suffer them to be used; they were loaded with slugs.

Q Do you know any thing of any guns afterwards?....A Yes, I was permitted to lay hold of the guns, and send them home, which might be about four hundred yards from Mr. Hutton's house. When they returned again the second time, as I mentioned before, I was talking to Whitehead on or about the green; a mahogany bedstead, an oak-table, a picture, and some other matters, were thrown out of the window; Whitehead and I were talking together for some time, and while we were standing there some person, I cannot tell who, went to take up a picture, it was a picture of Garrick in the character of King Lear, I saw a person going to pick that up, Whitehead immediately went to him, and said nobody should take away a thing who does not belong to the premises; and then there was some lace which they cut to pieces, because

because it should not be carried away, I saw it done.— Whitehead was continually with me, and the only one I had to talk with, except the book-keeper of the manufactory I served in, him and Whitehead were all I talked to; I heard an alarm in the turnpike-road that guns were coming. Whitehead and I went into the turnpike-road, there came Hemmings running with a gun; I then left Whitehead, and went up as far as the Waggon and Horfes, it might be fifty yards on the other side the road, when I had nearly reached there, the man had come up, and it appeared to me that he was pointing the gun at Whitehead; Whitehead had a stick in his hand, and knocked him down, and after he was down he wrenched the gun from him, and went to strike him and hit the ground.— When I saw that, I quitted the premises; I did not give myself any more trouble, only as I was about fifty yards from the place, I heard a gun fired.

Q Whitehead was with you till this affair of the gun?
....A Yes, though he came with the rioters.

Q He did not do any mischief?....A No, he was the only friend I had.

James Moulds cross-examined by Mr. Newnham.

Q He seemed to have the command of the rioters?....A He had friendship for them, perhaps.

Q He came with them both times?....A He did.

Q What did they do the first time?....A Had eating and drinking belonging to the house.

Q Do you mean to say it was brought out to them?....
A It was.

Q By whom?....A By me some of it, I assisted.

Q Did not they go in?....A No.

Q Did not they insist upon going in?....A I cannot say they did, every body was willing to give them any thing if they did not use any violence.

Q They went into the cellar?....A Yes.

Q The house was demolished?....A Yes, at last; but not whilst I was there.

Q And afterwards set fire to?....A Yes.

Q What did they get out of the house besides this ale?
....A Bread and cheese and ale.

Q After

Q After that were they satisfied?....A No.

Q They had all you had in the house?....A There was not enough in the house.

Q Enough, why whose bread and cheese was it? Was it their's or was it Mr. Hutton's?....A Mr. Hutton's to be sure.

Q Where was any thing else got from to satisfy them?A I cannot say positively where.

Q What did they fetch besides bread?....A A cheese.

Q Did they drink all the beer?....A No, nor half.

Q Did they stave the casks?....A Yes, they did.

Q They did not drink near all the beer?....A No.

Q They destroyed the rest?....A They did not throw out the beer, they only took the head off; I left the premises when Hemmings did.

Q What time was that?....A About seven in the morning.

Q After they had been there the second time?....A Yes.

Q Do you know Cresswell?....A No, I have seen him.

Q Was not he there as one of the guards?....A Yes, but I cannot say I personally knew him.

Q What employment were you in?....A Mr. Hutton sent to his relation for whom I work, and I came by his desire.

Q How many of the rioters were there the first time?A Twenty, or upwards.

Q The second time?....A Thirty, or thereabouts.

Q They came in a riotous manner, what did they halloo?....A Church and King for ever.

Q Did not they threaten destruction to the house?....A Not in my hearing, any farther than I desired they would not destroy it.

Q How came you to desire them not to destroy the house if they had not threatened it?....A I knew the fate other houses had shared, I expected so.

Q They came in that tumultuous manner, hallooing?....A Yes.

Q You desired them not to destroy the house?....A I did.

Q Did they or not destroy the house?....A Yes.

Q How came you to address Whitehead?....A He was an

an acquaintance, and I did not wish him to be seen in such company.

Q You was in a great passion?....A Yes, I said what the devil are you come again for.

Q Then you took him for one of the rioters?....A I expected he had been doing his endeavour to keep them away.

Q How came you then to address him in such a passion, what the devil are you come for here again?....A I did not speak to him alone.

Q You said you spoke to Whitehead?....A I might speak to him, but not to him alone.

Q You said you spoke to him as being your particular acquaintance and friend?....A I did, but not alone.

Q You addressed yourself to Whitehead as your particular acquaintance, and said what the devil are you coming here for again; now what could be the reason for your passion if he was coming to do no mischief?....A Yes.

Q That put you in a passion, did it?....A I did not know what he had been at down at Saltley.

Q You had seen them before?....A Yes.

Q Afterwards they came in a riotous way, and then you addressed Whitehead in this manner?....A I addressed him as a rioter, though I found he had not been with them.

Thomas Turner sworn, examined by Mr. Clarke.

Q Where do you live?....A Snowhill, Birmingham.

Q What is your business?....A A button-maker.

Q Do you know the prisoner?....A Yes.

Q How long have you known him?....A I cannot tell how long he has worked for me.

Q How long have you known him from first to last?....A More than a year.

Q Be so good as tell the Court how he has conducted himself, and what his character has been?....A A sober, steady, quiet man, beloved by his master and shop-mates.

Q A quiet man?....A Yes, and if there were any quarrels in the shop he was the first to settle them, he was a very industrious honest man; the week before he was

was taken I told him he should have the privilege of taking an apprentice.

Thomas Turner cross-examined by Mr. Newnham.

Q Tell me whether you have any reason to know that William Davis came here as a witness against the prisoner?

....A If he is a mason I know him.

Q Would his being a mason lead you to know it?....A I heard there was a mason swore against him.

Q You mean a mason by trade?....A Yes.

Q You know nothing about the riot?....A I cannot help knowing there was a riot at Birmingham.

Q You cannot tell whether he was at work or not at the time?....A I have such a number of them I cannot tell when they are all at work.

John Goss sworn, examined by Mr. Clarke.

Q Do you know the prisoner?....A Yes, I have known him twelve years, he is a civil, sober, honest man, bore a good character; he lived in a house of mine and kept the club-book.

Nicholas Sherrot sworn, examined by Mr. Clarke.

Q Where do you live?....A At Birmingham.

Q What trade are you?....A A button-maker.

Q Are you a master?....A No.

Q A journeyman?....A I have left it off some years.

Q How long have you known the prisoner?....A Near fourteen years.

Q What has been his general character for that time?....

A I do not suppose a man in his line had a better character in the town, not of a common mechanic.

William Osborn sworn, examined by Mr. Clarke.

Q Where do you live?....A At Birmingham.

Q Do you know the prisoner?....A Yes, exceeding well.

Q How long have you known him?....A Fourteen or fifteen years, he has as good a character as any working man need to have.

Q That has been his character all the time you have known him?....A It has.

SUMMING UP.

COURT.....Gentlemen of the Jury....This is an indictment against the prisoner at the bar for an offence of a similar nature, and arising upon the same law I stated to you before....The charge is, for riotously assembling, with twenty other persons, and feloniously beginning to pull down and demolish the dwelling-house of William Hutton, against the statute.

Gentlemen, in support of this charge two witnesses are first called, who were examined upon the former indictment against the last man that you acquitted. The testimony in this trial is much the same, but there are particular parts which apply to this case only.—I shall state them to you as particularly as I can.

On the 15th of July, Cresswell says (as he said before) that he was employed by Mr. Hutton as a gardener to put his garden in order, this was on the 15th of July; he says that Mr. Hutton having a suspicion that there was an intention to do injury to his house, had directed him to continue in the house and to prevent its being destroyed, as far as he was able; and he says, that between four and five in the morning of the 16th of July a number of persons, to the amount of twenty or five and twenty, assembled before the house; they came there for the purpose of obtaining liquor and victuals, and they went into the cellar and took two casks of ale out, which they drank either in whole or in part; they eat bread and cheese, and went away about six o'clock in the morning without doing any mischief; he says they returned in a very short space afterwards; he says there were either twenty or five and twenty when they came the first time, but when they came the second time their number was advanced to about thirty, according to the best of his judgment. The prisoner was with them, as I understand, at both times; came there the first time, and returned with them the second time.....Gentlemen, he says he addressed himself to Rice; he says the windows were then began to be broke; he says the prisoner was not on that part of the house that Rice was; they began, he says, with the kitchen windows, but the prisoner was not with them at the outset of the business, but he says he saw the prisoner
F breaking

breaking windows at another part of the house, which I take to be the back-front next the turnpike-road; he was not only armed with bludgeons but was engaged in breaking the windows and the window-frames at the front of the house next the turnpike-road; he says he saw him take a gun out of the hands of John Hemmings (that seems to be admitted on the part of the defendant, as well as proved on the part of the prosecution) but the inducement for his taking that gun from him is for your decision upon the evidence, you are to judge whether he designed to do injury to those persons who were protecting the house of Mr. Hutton, or, whether he was himself a partaker in the preservation of the house, that is for your judgment. He says he took this gun from Hemmings and knocked him down with the butt end of it, but there certainly could be no occasion for that violence, it might certainly have been done in a manner that would have affected the purpose without that violence.

Gentlemen, he says that he knocked Hemmings down, and swore he would kill him; the witness afterwards went into the garden where the prisoner, Whitehead, had carried this gun; he came up to him with the gun in his hand, and struck him with the gun upon the left arm. To be sure there could be no occasion for his attacking Cresswell in this way, and, if he came with any sort of intention in his own mind to protect the house, it is extraordinary that he should attack a man who was there originally for the purpose of protecting the house, and was not one of the rioters. Gentlemen, he tells you he knew the prisoner at the bar very well, he saw him there, and he knew him because his hair was hanging loose upon his shoulders when he had usually seen him with it tied, and that makes him say positively the prisoner was there. There can be no doubt but he was there, for it is admitted in his defence, therefore, certainly so far, the evidence of Cresswell is true. He says the prisoner was paling the windows with force with a bludgeon; if that was the case, it does not seem that he came there with any intention to protect this house, but was in the act of demolishing the house.

Upon

Upon his cross-examination he says, he did not see the prisoner till a quarter of an hour after Rice attacked the house: This seems to be the principal part of his evidence.

John Hemmings gives much the same account that he did upon the former trial; that between four and five in the morning the mob came to Mr. Hutton's house, huzzaing church and king; that they eat and drank, staid about an hour, and then went away; and the prisoner was among them. Gentlemen, he says, they returned about six, there were thirty of them there, as he apprehends at this time, more than what were there the first time, they began crying church and King for ever, and huzzaing; and he saw the prisoner breaking the windows with a bludgeon as hard as he could; he saw the prisoner in the house taking the banisters of the stairs up, he saw him afterwards breaking the windows and window frames on the side of the house next the turnpike; he stood in the turnpike road with two guns charged: the prisoner came up, wrenched one of them out of his hand, knocked him down with it, swore he would kill him, and he was, according to his apprehension, in the act of cocking the gun for the purpose of shooting him, but some person prevented his doing it. He says, he saw the prisoner in these four instances, and is sure he was there. Concerning which fact there is no doubt, for that is admitted upon the evidence for the prisoner. He says he did not come with those guns for the purpose of offence, he had never used them for that purpose, and had never presented his gun to any of those persons: I think it would have been a very dangerous act if he had attempted it. He admits that Moulds was one of the persons employed by Mr. Hutton to guard the house. There were a great number of questions put to this man respecting the quantity of ale, and the answers that came from these questions are, that he was up all the night protecting and removing the property, and that he had not drank more than a pint and a half of ale, which I think does not seem to be too much under those circumstances.—The next witness is William Davis, he was one of the guards in the house upon the 16th of July; they all seem to agree that the time of their coming was between four and five; he confirms the other witnesses with respect to the bread and cheese, and ale; that they

went away, and returned again in greater numbers than there were the first time; that the prisoner was there the second time, he went into the house and broke the windows with a stick, and the bannisters of the stairs; that the prisoner went up stairs, what they did there he cannot tell; they came down stairs and struck him; they demolished the house as fast as they could, and afterwards it was totally destroyed by fire. He afterwards saw Cresswell struck with a gun in the garden by the prisoner; he struck him several times: he was not at first where Rice was, nor when first the windows were broke; he says there was a curtain rod which he was taking up, and the prisoner came as a person having authority, and made him lay it down.

Samuel Mafon, another of the persons employed to guard the house says, the mob came about four in the morning crying church and King for ever, and huzzaing and demanding liquor; they went away, were absent about half an hour, and then as soon as they returned they went to the front of the house; in a minute or two he heard the windows break, he saw the prisoner in the house and breaking the windows next the turnpike road with a stick. Hemmings had two guns in his hands, the prisoner got one of the guns from Hemmings, and said he would kill him, cocked the gun, and he believes he was prevented from killing him by a person there; the prisoner came over the wall in a hasty manner (the wall was next the turnpike road) from a shrubbery or plantation of trees which was before the house.

Now, gentlemen, I have stated to you the substance of the evidence on the part of the prosecution, and there must be four men absolutely perjured if the prisoner at the bar was not present—was not active in the business—did not pull down and demolish the house, so contrary to that evidence that Moulds has given. You are to judge whether four persons are deserving of credit, or whether you think four persons would be guilty of perjury for a purpose which one shudders to think of—to affect the life of a fellow-creature—they must be the worst persons upon the face of the earth.

Upon the part of the prisoner Moulds gives this testimony, you will judge of it, and weigh in your minds how

how far it deserves credit ; he tells you, he was employed for the purpose of protecting the house, that he saw the prisoner the second time that they came, he was an acquaintance of his, and conversed with him, he saw him, and according to my idea he came there not shewing any difference of behaviour, he partook of the bread and cheese, and ale, and acted just the same as the rest of those people that came there. And, gentlemen, there was a doubt upon the trial whether this man was there or no, but by the evidence upon the part of the prisoner it is cleared up. There is no doubt but he was there if you give credit to these two witnesses, because all the four witnesses on the part of the prosecution speak to his being there at this time. With regard to Rice there was no decisive evidence of his being there as in this case, but this man is proved to have been there by the evidence of four; as to Rice it was doubted whether he was there or not; with regard to this man he certainly was there, and the only question is how he acted when he was there: Moulds says, he saw him there; now observe the manner in which he addresses him; he admits himself to be in a great passion, he comes up to him, and says, what the devil do you do here, and he says, he endeavoured to prevent the house being demolished, and to make the prisoner instrumental for that purpose. He says, with regard to this business of Hemmings and the guns, that Hemmings had the guns when the rioters came, that he was apprehensive some mischief would arise from those guns, and he had persuaded the prisoner to get rid of those guns, which he did, but they were afterwards brought back again; he says, Hemmings was in the turnpike road with two of those guns, that the prisoner came and took one from him, and knocked him down with a stick, not with the gun but with a stick, and this was at the request of Moulds to prevent mischief. And in order to shew you the impropriety of this prosecution, and the ill-foundation of it, he says, that the prisoner at the bar was so far from being active in this business that his interference with regard to taking the curtain-rod, and also with respect to a picture of Garrick in the character of king Lear, was for the purpose of protecting the property for the right owner, and to prevent other persons
from

from taking them. He says, that the prisoner was so far from acting in the demolition of the house, that he was with the witness all the time, and did no act whatever that could have that tendency. This is what he positively swears; and certainly, if what the witnesses for the prosecution say is true, he must be perjured. There are four of them swear one way, this man contradicts them; and places the prisoner at the bar in a very different situation to what the witnesses for the prosecution do, for he says, that he was the most active in the preservation of the property.

Gentlemen, he was with the rioters at the outset of the business, went away with them, and returned with them again, if he had that power over the mob, why did he bring them there a second time? he should have prevented their coming there if he had any regard for Mr. Hutton; the best way would have been to have prevented their coming there, instead of that he comes with them, and appears with them there.

Moulds tells you that the house was in fact demolished, it was set fire to at the last, and the whole was destroyed. They came about six o'clock, and he went away about seven, and left the prisoner there, as I understand. He says he addressed the prisoner in this way, 'what the devil are you come here again!' so that it seems he thought he was come to act in the riots; but upon a conference he had with the prisoner, in which he explained himself, he found he was mistaken, and that he had come there for a very different purpose.

This, gentlemen, seems to have been the principal evidence so far as I have collected. It is possible I may have omitted evidence as I did upon the former trial, which I ought not to have done, because it was material, it slipped my attention; but I believe I have not omitted any thing in this.

Gentlemen, there have been called several witnesses to this man's character; and indeed they give him such a character that one could hardly have supposed that a person bearing such a character would have gone there, either as a friend or an enemy to Mr. Hutton. Mr. Thomas Turner says he has known the prisoner more than a year,

that is but a short time, he says he is a very good workman, and did his business very much to his satisfaction; that he was a sober, steady, honest man, and a quiet man, which is a very material character in a case of this sort; he was always industrious in his business, and he was so very industrious in his business, that he gave him the indulgence of taking an apprentice, which is, I suppose, considered as a considerable advantage.

John Goss says he has known him twelve years, that he was a very sober, quiet, honest man.

Nicholas Sherrott says he has known him fourteen years; he tells you no man in his line has a better character than the prisoner. Now I should suppose that character may more allude to his being a good workman than any thing else, because he says, in his line, which certainly implies his being a good hand at his business.

William Osborn has known him fourteen or fifteen years; he says he has as good a character as any working man need to have; so that both these characters seem to apply rather to his business and trade, than to his temper and disposition with respect to quietness and good behaviour. However, you will no doubt, Gentlemen, give every possible weight to this character, and couple it with the evidence of James Moulds in favour of the prisoner. If you discredit the testimony of those four witnesses on the part of the prosecution, and give credit to the testimony of Moulds, and add that character which has been given to the prisoner, in that case, you will certainly acquit him. However, Gentlemen, you will consider the whole of the evidence whatever your verdict is, it will be satisfactory,

Prisoner. If your Lordship will give me leave, I will tell how I came to go there. Being Saturday morning we usually get up betimes to work, and the street I live in leads the back way to Mr. Hutton's house; and when I came to the upper part of the street, I heard a noise at a distance, which was the cause of my following it.

COURT. That was the foundation of your coming there.

Prisoner. Yes, and the reason that I came the second time was to do my endeavour to get them back as I had done before.—NOT GUILTY.

JOHN GREEN,—JOHN CLIFTON,—AND
BARTHOLOMEW FISHER,

For pulling down the Dwelling-house of Dr. Priestley.

NAMES OF THE JURY.

John Guest, Birmingham
John Travern, ditto
James Aspinall, ditto
John Merry, ditto
John Winfield,
John Hutson,

Christopher Law, Birmingham
Henry Parker, ditto
Edward Bowyer, ditto
Joseph Lyndon, ditto
John Clarke, ditto
John Eaves

MR. COKE,.... **M**AY it please your Lordship—
Gentlemen of the Jury—In the absence of Mr. Newn-
ham, it is my duty as next in seniority, to state to you that
you are again to-day proceeding upon the same serious
business that occupied your attention yesterday morning....
There never was any occasion in this country which called
more for your attention..... There never was any occasion
in which government acted more honourably; because
they have taken upon themselves, in order to spare indivi-
duals, the expence and load of prosecution. If Juries
acquit, it is not the fault of government. I do not mean
to say that any were improperly acquitted yesterday, but
that government have done their duty, and Juries are to
do theirs. If men are to be persecuted on account of
opinions in this country, we live in a country not worth
living in. Dr. Priestley, in his public and private cha-
racter, is an honour to society, and if he is to have his
house pulled down because he holds particular religious
doctrines and political opinions, you ought to sell your
property in the country, and leave it immediately. I do
not profess to agree with Dr. Priestley either in his religious
or political opinions; but if I had been at Birmingham, I
would have lost my life in the protection of his house, and
the more so because he holds opinions different from mine.

How

How do you know, by and by, Gentlemen, that persecution may not make the smallest sect in this country thrive; nothing tends to make dissention thrive so much as persecution; and if there ever was persecution in the world, it is the setting fire to men's houses because they hold particular political or religious opinions.And I lament it extremely as a church of England-man, that this would tend to augment the number of Dissenters, who are very respectable, quiet, and good subjects; but I think this brings danger with it unless you convict every man whom you believe to be guilty; for persecution increases any sect, and it is manifest that they have been persecuted in the most gross and infamous manner; and if you do not punish what will all Europe say? That government have stood forward in their protection, but Juries would not convict. Every man has a right to dissent, and the Dissenters are as good subjects as we church of England-men.Every man has a right to hold his particular opinion, and if you do not convict you are enemies to your country; you are upon oath, and you ought, from the principles of honest men, to convict when the evidence presses against the prisoner.

Gentlemen, I have told you and you know the fact to be so, that Dr. Priestley's house was pulled down merely because he was a Dissenter; you know very well that is no reason at all; Dr. Priestley's life is irreproachable. I believe he would not have escaped with life if he had staid half an hour longer. Look at those fellows—what a pretty exchange it would be if one hundred such fellows were left alive and Dr. Priestley thrown into the fire.If you do not convict upon this occasion and there should be another riot he himself will be burnt.Gentlemen, another 14th of July will come next year, and probably there will be the same reason for rejoicing over the French constitution that there is this year, and I will not prevent it.I dislike those meetings as much as you, I should not chuse to be present at them, but in this country I would have men dine where they please, and if they chuse to dine the next 14th of July, which I hope they will not, but if they do, they have a good right to drink bumper toasts and get drunk if they please.And if you do not convict these vagabond fellows, Dr. Priestley himself will be burnt.

Gentlemen, you have sons and grandsons, and the tables may be turned on you, and an hundred years hence they may be thrown into the fire.....Therefore I call upon you as Englishmen, I call upon you as friends to the constitution, only to attend to the evidence and do your duty.....I tell you in what a situation you stand, you stand in a very conspicuous situation, there are no twelve men in England upon whom the whole country are looking with so much anxiety and expectation as upon you.....I have heard it said, as I have been passing in the streets, "*they will not convict any of them.*"....Contradict it, Gentlemen, for it is to your disgrace if you do not.

Mr. CLARKE. You have no right to state what you have heard said in the street.

COURT. I think the learned counsel has opened it very properly.

JURY. I think it is a reflection upon us,....I told your Lordship yesterday that I wished to decline serving at all,....I feel it, that the learned counsel has insinuated that we have done wrong;....I come here to do my duty, and I know the nature of an oath as well as the learned counsel does.

Mr. COKE. You will first of all know that the counsel that addresses you now, it is an hundred to one he had spoke to you upon these assizes at all, it is only from necessity in the absence of my learned friend, whose absence I could not possibly foresee, and I have only been exhorting you and telling you that which in my mind we ought to tell a Jury. I started by telling you that I did not mean to say you had done wrong yesterday, but am I blameable for telling you that the eyes of the whole country are upon you? Am I blameable for telling you what I heard said of you out of doors. There are some who expect of the Jury because they wish well to the church and King, as I do, and as every man in the country does, that therefore the rioters may have a better chance upon political grounds than they might otherwise have; I do not agree in that opinion, but I tell you that has been circulated.

Gentlemen,I will not add any thing more; as my Lord says I have not said any thing improper to you; therefore I leave myself in the judgment of his Lordship,
and

and will call the witnesses: Your duty will be after you have heard the evidence to pronounce your verdict guilty or not, as in your conscience you think you ought to do.

EVIDENCE FOR THE CROWN.

John Harris sworn, examined by Mr. Sutton.

Q. You know Dr. Priestley's house at Fair-hill?....

A. Yes.

Q. Did you see that house upon the 14th of July?....

A. Yes about ten o'clock or a little after.

Q. At night or in the morning?....A. At night.

Q. Did you see any thing happen there?....A. Yes, there were about twenty or thirty people there and many of Dr. Priestley's friends giving them drink and desiring them to go peaceably home.

Q. Did they go away?....A. Yes.

Q. Did they return again?....A. Yes, in the morning with a great many more.

Q. What time?....A. About twelve or half after twelve at night.

Q. Was there any cry among them?....A. Yes.

Q. What?....A. They cried church and King sometimes, but they chiefly hallooed and huzzaed.

Q. This was between twelve and one?....A. Yes.

Q. Were there any particular persons that you knew amongst them?....A. There was no particular person there at that time that I knew.

Q. How many might there be?....A. I do not know.

Q. But more the second time than the first?....A. Yes, by a great number.

Q. What did they do?....A. The first was a man that the mob called Stanniard, he struck at the gate with a weapon he had in his hand, him and the others began to strike at the gate with their weapons, and they fetched it down and broke it to pieces.

Q. Did you see any part of the furniture of the house destroyed, the bedsteads or pannels of the doors?....A I did.

Q. By whom?....A. I saw Green on the 15th of July breaking some bedsteads

Q. What

Q. Which of the prisoners?....A. The farthest one.

Q. What time?....A. I cannot exactly say, it was day-light.

Q. Very early in the morning?....A. I fancy it was at sun rising, but I cannot say justly to the time; they were there a long time, John Green was.

Q. What did you see Green do?....A. I saw Green destroying a pair of bedsteads belonging to Dr. Priestley, and breaking the banisters of the stairs, and likewise the doors and the window shutters several times in that morning.

Q. Did you see Joseph Foster there?....A. I did upon the 14th of July about eleven at night or between eleven and twelve.

Q. Was Foster doing any thing?....A. He was not, but was sent there by order of his mistress, to seek for his master and to desire him to come home.

Q. Did you see any body endeavouring to carry off a bed of Dr. Priestley's?....

Mr. WILLIS. You must not ask to any particular act.

Mr. SUTTON. You saw Joseph Foster there?....A. Yes.

Q. What was he doing?....A. Joseph Foster and myself were carrying a bed down stairs, two or three beds by turns, and books, and we were carrying them to Mr. Godstone's farm for safety.

Q. Did any body interrupt you?....A. In the time of carrying down one of the beds, Green was there and Stanniard, and several more of the mob were desiring to know what we were going to do with that, we told them we were going to destroy it.

Q. What was your reason for saying so?....A. Because we were in danger ourselves, and we expected if we had not said so we should have been knocked down.

Q. What were you carrying the beds away for?....A. For safety.

Q. Did Green say any thing?....A. I will not say Green positively, but Stanniard and others.

Mr. WILLIS. Do not tell us that.

Mr. NEWNHAM. Was the prisoner Green there at the time you were carrying the beds away?....A. Yes.

Mr. SUTTON. You do not remember any thing said by Green particularly?....A. No.

Q. Was

Q. Was Green near enough to hear you say you was carrying it away to destroy it?....A. I do not know.

Q. Did you see any other person you can name besides Green?....A. I saw Fisher there upon the 15th of July.

Q. Should you know him again?....A. Yes, he stands in the middle here.

Q. What did you see him do?....A. Breaking the pannels of the doors.

Q. What time did you see Fisher there?....A. Day-light in the morning.

Q. At the same time that Green was there?....A. Yes.

Q. What did you see him do?....A. I saw him breaking the doors, the pannels of the doors.

Q. Any thing else?....A. Yes, I saw him breaking the shutters and window frames, but to pretend to say any thing else I saw him doing, it is impossible for me so to do.

Q. Did you see any body else there whom you can name besides Green and Fisher?....A. Yes, John Clifton.

Q. Did you see him do any thing?....A. Yes, breaking the door of an apartment belonging to the house.

Q. Any thing else?....A. Yes, breaking some of the window shutters, but I durst not stop there at this time, I saw Clifton first; I was conveying this bed away.

Q. What time was that?....A. I cannot say justly for it was light all night,

Q. Was it before or after you saw Green and Fisher?....A. Before that.

Q. And you saw him breaking the doors?....A. Yes.

Q. Were these men or not active in doing this mischief?....A. Fisher and Green were very active for a long time.

Q. How was Clifton?....A. I saw him but very little.

Q. With respect to the people in general, the mob I mean, did they come in a riotous manner or peaceably?....A. They came very riotously.

Q. When was it you left Dr. Priestley's house?....A. I left it upon the 15th day of July in the afternoon, I stopped there till it was nearly consumed.

Q. Was it set fire to before or after you saw this damage done by the prisoner?....A. This damage was done by the prisoner some hours before I saw the house set fire to.

John Harris cross-examined by Mr. Clarke.

Q. What are you?....A. A cast iron founder.

Q. How came you there ?....A. I was sent by my mistress to find my master.

COURT. Who is your master?....A. Mess. Clark and Beasley.

Mr. CLARK. You was not employed by Dr. Priestley?....A. No, not at first.

Q. You carried away some of the goods?....A. Yes, a great many of them.

Q. You said when you was asked what you was going to do with some beds, you said you was going to destroy them?....A. Yes.

Q. Suppose this evidence had been produced against you, and you had stood where the prisoners do, what would you have said to that?....A. I can plainly prove I was taking them to the house for safety.

Q. Be a little more particular as to times; what time in the morning was it you first saw Green?....A. It was day-light in the morning.

Q. But day-light may be the middle of the day you know: be a little accurate as to the time?....A. I will not be accurate.

Q. How long had you been there before you saw him?....A. Many hours before I saw Green.

Q. How many?....A. I had not a watch nor was not nigh any clock to know, and there was such a noise in the house.

Q. But you are very accurate as to expressions and conversations, surely you may particularize times within an hour?....A. I cannot pretend to do it, it was day-light.

Q. It is day-light by three o'clock in the morning?....A. The moon gave light all night.

Q. Was it three o'clock?....A. I cannot say.

Q. But I must bring you to some point, day-light in the morning can be no description, waits three o'clock?....A. I cannot say.

Q. Was it four?....A. It was between twelve at night and twelve in the day that I saw him there.

Q. That is a pretty extensive space; you do not suppose that answer will satisfy me: am I to understand that you do not know whether it was twelve at night or twelve at noon?....A. The time he was there was day-light in the morning.

Q That is pretty near as accurate as between twelve at night and twelve at noon.

COURT. Give the best account you can.

Mr. CLARKE. Within an hour?....A I saw Clifton first.

Q I am speaking as to Green.....A I believe it was somewhere about four or five o'clock,

Q Was it four?....A I cannot tell.

Q Was it five?....A Somewhere thereabouts.

Q Will you swear it was between four and five?....A I cannot, I will tell you as near the truth as I can, and I will not do otherwise.

Q Will you swear it was not six o'clock?....A I will not.

Q Nor you will not swear that it was not four?....A No, for an hour I cannot tell, for I was very busy protecting the property.

Q But why did not your business put the conversations out of your head as well as the time?....A Then I was to see all my friends knocked on the head, and their goods destroyed, was I?

Q But how came you to recollect one more than the other?....A Somewhere about five.

Q What was the first time you saw Clifton?.....A. About four o'clock.

Q When did you see Fisher?....A It was about five, at the time I saw Green.

Q Had you any acquaintance with any of them before?....A Yes, with Clifton a long time.

Q Who else?....A And Fisher, I have known him by working in Deritend time after time.

Q Was you much acquainted with Green?....A I do not think I was ever in his company in my life.

Q Was it a light or a dark night?....A Pretty light.

Q You was very much alarmed and frightened I suppose?....A To be sure every body that was removing the property was frightened.

Q I ask you whether you was frightened?....A I was not frightened—nothing at all in particular about it.

Q How long did you stay at Dr. Priestley's house?....A I went there about ten o'clock on the 14th of July, and stopped till the house was nearly consumed.

Q Without

Q Without being sent for by Dr. Priestley, or any thing?....A No.

Q And was there from the beginning to end?....A. Yes, nearly.

Q When there was nothing more to be done, then you came away?....There were many people looking on.

Q When there was nothing more to be done, then you came away?....A It was no use to stop then.

Q You was examined before the magistrates?....A. I was.

Q. Do you recollect what you said before the magistrates?....A I recollect I told the magistrates I would not pretend to say to half an hour or an hour; for it was impossible for any man to do so,

Q Did you particularize no time before the magistrates?A They asked me, was it three o'clock, or four o'clock, and I said it was about that time, or five o'clock.

Q Six, seven, or eight, I suppose?....A No such thing.

Q Was any thing said about twelve or one?....A Yes, they asked me what time I was there, and what time they broke into the house.

Q Did you not say, you saw Green there between twelve and one?....A. No, not to my knowledge.

Q You will swear that you never said you saw Green there between twelve and one?....A If they put it down so, they put it down wrong.

Q I do not care what they put down; did you or did you not say so?....A I do not think I did.

Q I must have an answer—Did you or not before the magistrates say that you saw Green there between twelve and one?....A Indeed I never did.

Q That you will swear?....A I will.

Q You did not say before the magistrates that you saw him there between twelve and one?....A No, not Green, nor any other person except Stanniard.

Q What time was it that the mob broke into this house?....About one o'clock.

Q What did they do when they first broke in?.....A They knocked the windows to pieces.

Q What else?....A And the window-shutters; they broke in through the windows, they could not open the door, nor they could not force the door.

Q Could not they open the door when they got in?

....A The pannels were all broke before they opened it.

Q When did they destroy the door in order to let the rest of the people in?....A That I cannot tell, for they got in most of them through the window,

Q And when they got in they began to destroy the doors?....A Yes, and the windows and the furniture.

Q Immediately as soon as they got in?....A Yes.

Q This about one?....A Yes.

A What time was it they set fire to the house?....A About eleven or twelve o'clock in the day, or thereabouts.

Q And as soon as that was done you came away?....A No, I stopped till three o'clock in the afternoon.

Q You saw Fisher there?....A Yes.

Mr. SUTTON. You cannot be accurate as to the first time you saw these prisoners?....A I cannot.

Q Was it before or after sun-rise?....A I believe it was after sun-rise when I saw Fisher and Green, it was light in the morning when I saw them, but whether after sun-rise or not, I cannot tell, but it was day-light.

Q Long after day-light or soon after day-light?....A When I saw Fisher it was long after day-light.

Q When you saw Green, was it long after day-light?....A It was.

Q Who was the person with you helping to carry out these beds?....A Joseph Foster.

Joseph Foster sworn, examined by Mr. Percival.

Q Do you know Dr. Priestley's house at Fairhill?....A Yes.

Q Was you there upon the 14th of July last?....A Yes.

Q About what time?....A I went there about eleven at night.

Q What did you see at that time?....A At first there were about thirty men at the gate, and the servants bringing them ale and porter, and they waited upon them till the rest of the mob came, and then we all went into the house; the gentlemen in the house locked the door.

Q About what time?....A About one o'clock or after, but I cannot particularly say to the time.

Q In what way did they get into the house?....A They broke in at the front windows.

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Q Did you see any body in particular that you knew at that time?....A I did not.

Q How came you to be there that night?....A I was sent there by my mistress to assist in getting the goods out.

Q Who is your Master?....A Clarke and Beasley; when I came there I did not see Mr. Beasley, but I saw Mr. Clarke. What I went for was to fetch my master home, for fear he should be hurt.

Q But what did you do when you came there?....A Mr. Clarke asked me to come up to the house, and do what I could to get the property out.

COURT. Was Mr. Beasley or Mr. Clarke servants, or friends of Dr. Priestley?....A Friends; they went to help to get Dr. Priestley and his family from the house.

Q Mr. WILLIS. He does not know that; that is not evidence.

Mr. PERCIVAL. Did you or not find your master?....A I did not see Mr. Beasley, but I saw Mr. Clarke. Mr. Clarke was assisting to get what he could away after the mob got in.

Q Did you see any person you can particularly speak to?....A Not at that time.

Q But afterwards?....A Nobody besides my master as I know of, and this John Harris.

Q But amongst the mob?....A Nobody that I knew not till morning.

Q In the morning then?....A In the morning I was coming down stairs with a bed.

Q Was any body with you at that time?....A Harris; and there came a parcel of the mob up stairs, and they pulled the bed off my back, and asked me, Damn your eyes, what are you going to do with it.

Q Was there any body in that mob that you knew I....
A Yes, John Green and John Foster.

Q You saw Green?....A Yes, he was one that met me, they damned our eyes, and asked what we were going to do with the bed; I cannot tell who it was particularly. I asked what it was to them? and they pulled it off my back, and threw it on the stairs; and Harris said, We are going to to destroy it, and they said, Damn you, take it, then.

Q Did

Q Did you see Green do any thing else?....A I saw Green breaking a pair of bedsteads, I went into that same room thinking to take those bedsteads down but he was breaking them.

Q Did you see him break any thing else?....A Yes, the window-cases.

Q Any thing else?....A Nothing else.

Q Was Green active?....A Yes, helping to get the bed off me.

Q Was he active in any other respect?....A I did not see him because I was going backwards and forwards in the library getting the books out; I did not see him in any thing else, I was getting the things out as fast as I could.

Joseph Foster cross-examined by Mr. Willis.

Q I must trouble you to tell me what time in the morning it might be when you first saw Green?....A I cannot say what time it was, the sun was up.

Q What time did you go the night before?....A About eleven.

Q You went for the purpose of fetching your master home....how came you to stop so long?....A By Mr. Clark's order.

Q Did you see him there?....A Yes, he was there till five o'clock.

Q So instead of bringing your master home and doing as you was bid you thought fit to stop there all that time?....A One master went home and the other staid.

Q Now tell me what time it was you saw Green?....A About the same time.

Q Was it four?....A It was after four I am sure.

Q It was after four when you saw Green?....A Yes, it must be after four.

Q Now do you recollect meeting the prisoner and Fisher as you went home?....A I do not recollect as I did.

Q Will you swear you did not?....A Not as I know of.

Q Will you swear you did not speak to him?....A Not as I know of.

Q Was you so drunk that you forgot it?....A If I was drunk it was for want of drink, for I had had nothing to eat or drink all night.

Q You swear you was perfectly sober?....A I was.

Q You told me that as you was carrying a bed down stairs in company with Harris, the mob came up stairs and said, Damn you, what are you going to do with that?....A I did.

Q Tell me whether or not when you was carrying that bed down stairs, you had signified to any part of the mob that you belonged to Dr. Priestley, or any of his people?....A I had not.

Q Then, for any thing you know, the prisoner, Green, might fancy you was going to destroy the bed?....A He did not say any thing.

Q But did you discover any thing to him to shew that you was not going to destroy it?....A I did not.

Q And you and Harris were carrying this bed down stairs?....A Yes.

Q Was there any fire on the outside of the house?....A No, not while I was there, I went away before it was fired.

Mr. PERCIVAL. You told us that Harris told the prisoner and the rest of the mob that you were going to destroy the bed....Was that said before they interrupted you?....A No, afterwards.

Q And when you had said that what did they do?....A They let me take it.

Mr. WILLIS. You say the mob was coming up stairs, how many people might there be?....A I suppose eight or ten, the stairs were full.

Mr. BALGUY. I object to that....The witness has been examined on the part of the prosecution, cross-examined on the part of the prisoner, and my learned friend has very properly examined into an explanation of one question—If we are to have a replication upon that, then you will hear another from my learned friend, and the examination will never be at an end....If any question is to be asked by my learned friend, he will be so kind as suggest it to your Lordship.

COURT. In a serious trial of this nature you shall examine just in what manner you please, you shall ask whatever you please, and cross-examine as long as you please.

Mr. WILLIS. You told me as you were coming down stairs some of the mob met you?....A Yes.

Q There might be about ten persons you say?....A I did not count them particularly, but the stairs were full.

Q How wide were those stairs?....A About two yards I suppose.

Q That will not hold more than four persons in front?....A Three I suppose might fill it.

Q Was Green one of those in the front or behind?....A Partly in the middle.

Q Will you swear that in that noise and tumult Green was sufficiently near to Harris to hear what he said?....A That I am sure of.

Q How do you know that? How far might he be off?....A About the second or third step.

Q Was not there a great noise and confusion?....A Yes.

Alexander Clerke sworn, examined by Mr. Balguy.

Q Was you at Dr. Priestley's upon the night of the 14th of July?....A Yes.

Q What time of the night was it when you came there?....A Nearly eleven o'clock.

Q Were any persons assembled there at that time?....A There were about eight people in the road before the house when I went.

Q Were there any other persons in the house?....A There were some people in the house taking the property out with a view of taking care of it.

Q Was any of the mischief began to be done upon the house at that time?....A No, they were clearing the house, expecting it.

Q Did you at any time that night see any mob assembled at that house?....A Yes.

Q What time?....A About half past twelve they came up to attack the house.

Q How many in number?....A About forty or fifty at first upon the road.

Q Did the numbers increase or diminish?....A They increased all the night.

Q How many think you might be assembled of the mob, when the mob was at the greatest?....A Upwards of three hundred.

Q No

Q Now tell whether at any time during that night you saw the prisoner Green?....A Yes, I saw him about four o'clock in the morning.

Q What was the mob doing at the time?....A Destroying the furniture.

Q What was done at the house then?....A The banisters of the stairs were broke, and the most part of the doors and windows.

Q The window-frames?....A No the window-shutters.

Q The woods of the sash and the window-shutters were demolished?....A Yes.

Q Whether you saw the said prisoner Green take any part in this transaction?....A I saw him pull down a pair of bedsteads.

Q Where were they standing?....A In one of the upper rooms.

Q Were they up in the usual form?....A Yes, they were.

Q What was he pulling them down for?....A Seemingly for the intention of breaking them.

Q What did he do with them?....A I cannot say, I left him doing so.

Q What time in the morning was this?....A Nearly four o'clock.

Q Did you see him doing any thing else?—A No.

Q He had them in his hand pulling them down?....A Yes.

Q Did you observe whether Green had any thing in his hand?....A Yes, a piece of wainscot.

Q Do you know what he did with that?....A No.

Q Now tell me whether while Green was doing this the mob were tumultuous, and pulling to pieces the furniture in Dr. Priestley's house?....A They were.

Q In the house?....A In the house, and in that room he was in.

Q Were they doing any thing to the house itself at that time?....A Nothing more than knocking the windows and the inside of the house to pieces.

Q Now look upon the prisoner Green, Did you know him before this time?....A I have known him seven years since I knew him first,

Q Did

Q Did you know him when he was doing this mischief in the house?....A Yes.

Q Are you sure the prisoner at the bar was the man that did it?....A I am certain of it.

Alexander Clarke cross-examined by Mr. Clarke.

Q You said you saw Green taking down a pair of bedsteads?....A Yes.

Q The people employed to take care of them, must have taken them down, you know they could not have taken them away whole?

COURT. Was he in the act of breaking them?....A. Seemingly so, but I did not stay to see the end of it.

Mr. CLARKE. You saw him doing nothing more than pull the bedsteads up?....A Lifting them up and dashing them down again.

Mr. BALGUY. You said he had a piece of wainscot in his hand, and at time the mob were destroying the inside of the house?....A Yes.

Q Where any of them in the room where Green was at the time?....A Yes.

Q What were they doing?....A Some demolishing and some looking on.

Mr. CLARKE.....My Lord, your Lordship observes this is an Indictment against these prisoners for beginning to pull down and demolish the dwelling house of Dr. Priestley. It is in evidence to your Lordship, that before any of these men were seen there at all, the destruction of this house was begun. There is no evidence before your Lordship to shew that these men were present at the beginning of the destruction of this house, and if they were not there, and were not concerned in the beginning of the destruction of it, what they did afterwards will not come within the meaning of this Act of Parliament, because the Act says who shall begin to demolish or pull down, or who shall demolish and pull down. I shall submit to your Lordship upon the Act, that the meaning of it is the first beginners of the destruction of the house, for it seems reasonable it should be so, because the beginners of the destruction are the persons who do the mischief; therefore, the Act seems to me to apply the penal part of this Statute to the beginning

ning of the destruction ; therefore I think your Lordship will expect evidence to prove that these prisoners were the persons actually beginning the demolition of this house And in the subsequent part of the Act with respect to the hundred it says, who shall demolish or pull down, or demolish in part.....Now, if it had meant to extend the penal part to a part demolition, without a beginning to demolish, it would have said, who shall pull down wholly or in part, for the legislature seems to have been aware of the difference in the clause against the hundred, but in the clause which affects the life of the subject it says only, begin to demolish and pull down ; and it seems the legislature meant to point at those persons who actually began the demolition. A great deal seems to strike me upon this objection, and all the witnesses have said that the demolition of this house was begun two or three hours before the prisoners appear to have been there.

Mr. WILLIS.....I am on the same side.The objection appears to me to be so strong upon this clause of the Act, that it seems necessary only to state the enacting clause of the Statute for your Lordship to form a decided opinion upon it, and say that this is not within the meaning of the Statute.

The single question is this, whether this clause in this Act meant to constitute and create two offences, because if it did, then, my Lord, I shall submit that upon this evidence it is impossible to say that the offence charged, namely, that of beginning to pull down and demolish, is the offence proved by these witnesses.The words are these, " That if any persons unlawfully, riotously, and tumultuously assembled together to the disturbance of the public peace, shall unlawfully and with force demolish or pull down ;".....that I contend is one offence in the Statute. It then proceeds, " or begin to demolish or pull down." It is not any person who shall demolish or pull down, but who shall begin to demolish or pull down, constituting a separate offence. It seems to me upon an Indictment framed in this way, and a prisoner reading that Indictment, the only evidence he would think of producing would be to shew that he was not, when that riot began, when that house was begun to be pulled down, that he was not there
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at that time. And I shall contend that if the witnesses for the prosecution themselves had not made out the case for me, on the part of the prisoners I should have contended that if the house was begun to be demolished at twelve at night, I should only have to prove that they were not there till four in the morning; and I shall contend before your Lordship, that that would be a complete *alibi* upon the behalf of the prisoners, and that in that case they could not be found guilty.

Mr. NEWNHAM.....Whether your Lordship thinks it necessary for me to answer this objection?

COURT.....Certainly, I wish to hear what you have to say.

Mr. NEWNHAM.....This Act of Parliament is stated to consist of two particular offences; that is the argument of one of the learned gentlemen, namely, shall demolish or pull down, and shall begin to demolish and pull down. Now, I take it that the true meaning of that difference in words of the Act of Parliament in the two following lines is this, the one is where it shall be completely demolished and pulled down, and the other where the purpose shall not be carried into complete execution. For instance, suppose they had been baffled and driven back by the arrival of troops, if the act of demolition had begun to be put in execution, though not carried on to complete destruction; that is the meaning of the legislature. My Lord, I am told supposing this objection to be founded, that there is another following upon it, namely, that if one person coming at the head of twenty thousand, does with his own hand begin to demolish, only that one person can be convicted. Now, can any one hesitate to decide upon such an objection in such a case.My Lord, it is not uncommon for the counsel for the prisoners to take such objections, they would be wanting in their duty to their clients if they omitted to do it, but this objection was taken before my Lord Chief Baron at Worcester, and he instantly decided it.

Mr. BALGUY. My Lord, I am on the same side, and I take it that it is from your Lordship's inclination to hear every thing that can be said in favour of the prisoner that your Lordship has heard this objection at all. It is true
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the objection has been as well put and argued as such an objection is capable of being put and argued; But, my Lord, if your Lordship is not disposed, standing in the situation that you now stand in administering the justice of the kingdom, by a construction of this Act of Parliament to undo every provision in effect which the Act of Parliament has made; your Lordship cannot listen, in pronouncing the judgment you are to give, at all in favour of the objection.

My Lord, This Act of Parliament does undoubtedly contain two clauses.....The first clause of the Act of Parliament goes to demolishing the house, and if the indictment was to be laid upon that part of the Act your Lordship would expect a proof in fact of the actual destruction of every stick and stone upon the premises, and therefore, my Lord, where there is or not that complete demolition of the property, so as to destroy every part of it and to render it nothing, all indictments that have been preferred upon this Act of Parliament have been preferred upon the other clause, which other clause goes to this, that where a party is concerned in a mob beginning to demolish, then such parties are offenders within that branch of the Statute.

My Lord, the argument upon that branch of the statute is this, that in order to make a person an offender within it he must be present at the time that the first stone is thrown or the first blow is given, he must be present at the very beginning of the transaction, at the time that the first injury is done to the house; so that, my Lord, though there are fourteen, fifteen, sixteen, or twenty people there at first, that do a little mischief to the house who are repulsed, they return again with a mob of two or three hundred men to assist them, and afterwards the house is demolished, all those people who came to give their further assistance are free from any crime.....Is your Lordship prepared in judgment to proclaim it as the law of the country in the whole county of Warwick, that if five or six people go there riotously and tumultuously breaking the window-frames, for that is a part demolition of the house in point of law, these people are repulsed, they go back to their associates, bring a body of people and destroy the house, is your Lordship prepared to proclaim it, that this body of people

people, three or four hundred men, are free from punishment?....If your Lordship is prepared to say that, it will be putting a construction upon the Act of Parliament that I should be very sorry to have put upon it by your Lordship in your situation....But I will tell your Lordship what I take to be the construction of the Act;....Every man who joins a mob pulling down a house, or endeavouring to destroy it; from the moment he takes part in this felonious transaction he is a beginner to demolish; from the time he joins the mob and takes a part in the transaction he is a beginner to demolish.....Then, my Lord, it being so, what is the offence with regard to these prisoners? Whether they were there at the beginning or not is not clear upon the evidence, what we prove is, that they were there at four o'clock in the morning; and, for any thing that appears, they might have been there at the beginning.....Green was there assisting at four in the morning, he was assisting to demolish the house by breaking the windows, and is afterwards proved to have been on the inside, assisting to destroy the furniture; the mob were in the house endeavouring to destroy the inside of the house and the furniture.....I say, that in point of construction upon this Act of Parliament, he was there beginning to destroy; whether he was there at the very outset, when the first stone was thrown, when the first window-frame was demolished, is immaterial; the moment that he came there, that he took a part in this transaction, that he concurred in this unlawful proceeding, he made himself a felon from the beginning.....This is the judgment we expect from your Lordship.....I have no doubt, from your Lordship's judgment and ability to put a construction upon that Act of Parliament, but that you will put that construction which the principles of law require, for no man will know how long he is secure in his possessions if this law (which was made for the protection of the country, and upon which every man lives) is to be made a dead letter upon the statute book,....Because your Lordship puts a difficulty upon every indictment framed upon this Act for the party to prove that the offender was present at the time the first blow was given, and every person that is convicted must be proved to have been present at the first blow.

Mr. SUTTON.

Mr. SUTTON, Your lordship will favour me with a few observations in addition to those already made by Mr. Newnham and Mr. Balguy.

The question before your lordship now is, what is the true construction of that expression in the clause of this act which says, "or begin to demolish," that is to say, whether the construction that Mr. Clark puts upon it is the true one, or, whether that which I shall submit to your lordship is the fair and legal construction of that clause.

It is insisted upon the other side, that this beginning to demolish, is to affix the offence to those persons only, who were present at the first mischief. On the contrary, I submit to your lordship, it means only a partial demolition, and upon that very clause which has afforded the ground of argument to Mr. Clark, for your lordship will find that in two cases the sufferer can recover; he can recover upon the total destruction, and he can recover when the building is partially destroyed; and the reason is this, that they are not trespassers, but felons, therefore he is to have the remedy against the county or against the hundred.

My lord, your lordship will find two distinct offences created, the one is the complete demolition, the other the partial demolition. If Mr. Clark is at all right in his construction, the beginning to demolish does not mean a beginning which is not carried into execution, but the person that was present at the first blow given to the house. Your lordship will find that it is completely settled by the clause of the act, if it means only a partial demolition, ever person who took a part in it is a felon, and the reason why the sufferer can recover against him, is because he is a felon and not a trespasser.

Mr. PERCIVAL, My lord, this question has been so fully spoken to by the gentleman preceding me, that I shall say very little upon it: I shall put only one case, and make one or two observations to enforce the construction already insisted upon. The question is, whether the words do or no not mean a partial demolition: I will put a case to your lordship, from which it will be perfectly clear that our construction must be the true one. Suppose a house begun to be demolished by one or two persons, and they meet

meet with an interruption, suppose they come back again with a reinforcement; they go on with that destruction: suppose them again interrupted, they return again with a further reinforcement, and they are at last prevented from the total demolition; then according to Mr. Clark, the persons who could be alone called upon for punishment, must be those who were present at the first repulse, but those who came afterwards would come under neither of the clauses which punish those who have been guilty of a complete or of a partial demolition. Therefore the argument on the other side goes to this absurd consequence, that persons may be active in the destruction of a house, and this act of parliament, which is for the purpose of preventing such a demolition taking place in a part or in the whole, is nugatory. I state it in this way, because the argument of Mr. Balguy seemed to be open to the answer I saw my learned friends ready to give it: their answer would have been, that then they would have been under the other clause, and they would have been indicted upon that clause. But I have stated a case in which persons may be active in the demolition and not come under either of the clauses, if Mr. Clark's construction be the true one.

It is asked if the act means to create two offences, if that construction is the true one, it not only creates two offences, but must except from punishment the most effectual operators in this destruction; for if Mr. Clark is right, that only the first persons are under the description of beginners to demolish, all who come afterwards and stay any thing short of the complete demolition of the house, are under his construction of the act free from all offence, and free from every thing that this act creates as penal.

Upon this ground, I think it is impossible that the true construction of this act can be any other, than that the beginning to demolish means all those who are active towards a partial demolition, and any person active towards the demolition of the house, as far as he goes till the complete destruction of the house, is a part demolisher or beginner to demolish.

Mr. CLARK. Your lordship will, no doubt, from your humanity and from the weight of ability and learning
against

against me, give every attention to what I shall offer on behalf of the prisoners, in reply to the arguments of my learned friends.

Mr. Percival's argument is this, that if these men were repulsed at first and came back again, that those who came back the second time were not within either clause of the statute. If men riotously attack a house and do something towards the demolition of it, and a fresh mob come afterwards, and again begin the destruction of that house, it is not necessary for me to argue that that would not beginning of a riot and a second beginning of a demolition of a house. My lord, that is not the case here, the prisoners, were not at the place when the mob returned to begin the demolition a second time, therefore, that argument does not at all apply.

With respect to the argument of Mr. Sutton, that the clause must mean a partial demolition, I shall state a case which was tried before Mr. justice Grose, at Nottingham, I was counsel with Mr. Newnham in a case where an action was brought against a parish for the partial demolition of a house; and we submitted to the court, that upon that clause, the plaintiffs could not recover unless the persons destroying the house had been guilty of felony. The learned judge told us he apprehended upon that clause it was not necessary that the parties doing the damage, should be guilty of felony, because that was a remedial clause for the benefit of the subject. Therefore, my lord, supposing Mr. justice Grose's opinion to have been rightly founded, whether it was or no, your lordship is best able to judge, it was an action brought against the hundred to recover damages, and we submitted to the court that the parties must have been guilty of felony, but the learned judge held that it was not necessary under that clause, that a felony should have been committed; I am sure Mr. Newnham will recollect it, therefore, supposing Mr. justice Grose's opinion to have been right, there is an end of Mr. Sutton's argument.

Mr. Balguy has said that great mischief would ensue if five hundred persons attacked a house, and the person striking the first blow only could be guilty within this act.

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It is not necessary for me to argue this, for if one does the mischief, they may all be equally guilty; therefore the act would not be destroyed in that case, supposing that construction to be put upon it.

My lord, a great deal has been said that this act has been nugatory; let it be so, it had better been rendered nugatory than a construction be put upon it which it will not bear; it had much better these people go free than a statute so highly penal as this, should be extended by construction: And if your lordship hold these people to be within the statute in this case, then I shall contend that the penal statute must be extended by construction, though it has always been held that they ought to be construed strictly, and that there ought to be no extension of them. I am perfectly sensible of my own inability to answer all the arguments of the learned gentlemen, therefore, I trust your lordship will give your assistance as much as you can to the prisoner.

COURT. I should be happy if I thought the objection now made, would avail the prisoners; I should be very desirous to put such a construction upon this act, that would serve the purpose for which this objection is made. The objection is, that according to the true construction of the Riot Act, this case by the evidence does not come within the meaning of it; for the evidence is, that previous to the time that the prisoners were present, the demolition of the house was begun; some persons among the rioters had for three hours before begun to do the act and were joined by these men. Now I conceive, if I were to put the construction upon this act of parliament that is contended for by the counsel for the prisoners, I should render it highly nugatory, and render it merely a dead letter. I conceive according to the true construction of this act, which consists of two provisions, the one in the case of demolishing a part of the house, and the other in demolishing the whole of it: I conceive that notwithstanding half a dozen or twenty people may begin to demolish a house, and may be joined by one or more, those parties coming in afterwards are as much guilty upon the true construction of the act, for they give all their assistance to do it and encourage them, and are as much

much the authors of the business as those who began at the outset, and are to be considered as felons from the beginning, and as much the beginners of the offence as those who first set about it; it would be most absurd to construe it otherwise, for if one person out of one hundred should go and break the windows of a house and begin to demolish it, then the ninety nine should be excused from any offence; it is the most absurd construction that can be put upon the act: it would defeat the sense of the legislature, and I think would be to render the Act of Parliament highly nugatory. I would wish to put a construction upon it in favour of the prisoner, and if I had the least doubt I should reserve it for the opinion of the twelve judges, but I am perfectly clear in my construction, as it is argued by the gentlemen on the part of the crown, therefore I shall reserve it for the opinion of the jury.

EVIDENCE FOR THE PRISONER.

John Osborn sworn.—Examined by Mr. Clarke.

Q Do you know the prisoner Green?....A Yes.

Q Do you recollect seeing him upon the 14th of July?
....A Yes.

Q Where?....A In Vauxhall gardens.

Q What time?....A About eight o'clock; I stopped with him there till near twelve.

Q How long did you stay there?....A Till near twelve.

Q You went afterwards to see some of these fires?....A Yes.

A Do you recollect being near the Old Meeting-house when that was on fire?....A I cannot say it was on fire, they were pulling it down.

Q You went with him?....A Yes.

Q Did you see the prisoner employed in endeavouring to preserve any property from destruction that night?....A I did not see him meddle with any thing.

Q Did you see him carrying any water to extinguish any fire, or preventing any thing taking fire?....A I did not.

Q What time was you with him?....A Till between three and four o'clock in the morning, when we parted.

Owen

Owen Probins sworn.—Examined by Mr. Clarke.

Q What are you?....A A publican.

Q Do you know the prisoner Green?....A Yes, he frequented my house.

Q How long have you known him?....A Two or three years.

Q What has been his character?....A Very good; and he always paid very honestly for what he had, and behaved very properly.

John Mason sworn.—Examined by Mr. Clarke.

Q Do you know the prisoner Green?....A Yes.

Q How long have you known him?....A Two or three years.

Q How has he behaved himself during that time?....A Always very well in that neighbourhood.

Q He always conducted himself well and properly?....A Yes.

Richard Dingley sworn.—Examined by Mr. Clarke.

Q Do you know the prisoner Clifton?....A Yes.

Q How long have you known him?....A These fifteen years.

Q What has been his character?....A He was an apprentice of mine; his character is that of an honest, sober, sedate man; he has lived within ten yards of me all the time.

COURT. He was your apprentice?....A Yes.

COURT. And afterwards a journeyman?....A Yes, and worked with me at the time.

John Brookes sworn.—Examined by Mr. Clarke.

Q Do you know Fisher?....A Yes, I have seen him many times.

Q Have you had much knowledge of him?....A I know his parents very well, and know the lad very well.

Q How long have you known him?....A Six or seven years and more.

Q How has he conducted himself?....A Of myself I never saw any harm by him.

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COURT.

COURT. But what is the general reputation of the country in the place where he lives with respect to him? ...A Some people speak indifferently of him, but I do not know any thing of him.

Mr. CLARKE. We had two other witnesses for Clifton, but whose business prevented their attendance.

SUMMING UP.

COURT. Gentlemen of the Jury,...This is an Indictment against the prisoners, and another person now at large. The prisoners, Fisher, Green, and Clifton, are subject to your enquiry, and I hope you will give this case your utmost attention, for the lives of the prisoners are at stake, and the charge against them is for riotously assembling and demolishing the house of Joseph Priestley, Doctor of Laws, on the 15th of July last, at Birmingham, against the Statute.

Gentlemen, the evidence to support this charge is, first, that of John Harris. He says he was on the 14th of July, at ten o'clock at night, at Dr. Priestley's house at a place called Fair-hill, near Birmingham; that when he came there, there were about twenty or thirty persons there, and there were some persons, friends of Dr. Priestley, were giving this number of persons assembled there, ale and porter, requesting them to go away, and quit the house, and do no mischief there, which they complied with at first. He continued there all that night, and great part of the next day; that about twelve o'clock that night, those persons who had been prevailed upon to leave Dr. Priestley's house sometime before, returned with a considerable number in addition to the number of twenty or thirty that he saw there first; they returned in a riotous way, hallooing and huzzaing, and crying church and King in a riotous manner, all of them; at this time there was, as soon as they came there, one man in particular, of the name of Stanniard, who struck at the gate of the house of Dr. Priestley; they got admittance into the house and began to demolish it, and he saw the prisoner Green early in the morning of the next day; he would not be exact and precise as to the particular hour that Green was seen there, whether

whether four, five, or any particular hour, it was a difficult thing to induce him to be precise as to that matter, but from what I could judge from the whole of his evidence, it was between four and five, I should suppose, that he saw Green there; he says the mob had gained admittance into the house before Green came, but when he did come, he joined them, and acted in the way that they did; he saw them breaking and destroying a pair of bedsteads of Dr. Priestley's, and breaking the bannisters of the stairs, the doors, and the window-shutters.

Now if this evidence is true, in my apprehension, this is a clear beginning to demolish and pull down this house, for though the bedsteads were furniture, and from the course of the evidence it is attempted to be shewn, and you might be of opinion that Green was not there for purpose of destroying the furniture of the house, but protecting as one of the persons employed by Dr. Priestley's friends to convey the furniture to a place of safety, that Green might be considered as taking down this bedstead for the purpose of protecting it; but it could not be for Dr. Priestley that he was engaged in breaking the bannisters; it could not be for Dr. Priestley that he was breaking the doors of the house, as this man says, or the window-shutters; these are acts of destruction to the house, and demolition of it; and can receive possibly no other construction. But it is subject to your opinion whether you give credit to this testimony; if you are satisfied of the truth of it, it certainly is a beginning to demolish the house. He tells you that Joseph Foster was present, that he and Foster were there with a view to protect the furniture for Dr. Priestley's use, and to remove it to a place of safety, and for that end they were carrying down a bed from one of the apartments up stairs; in that act they left John Green with others upon the stairs, Green addressed them, and asked, What they were carrying that away for? and in order that they might not be prevented from taking away this bed, they, to effect that purpose, said they were going to destroy it; and they made use of that expression for the purpose of removing the bed to a place of safety, and it was for fear they should be prevented from taking it that he said that; he was then permitted to do it;

from which you see that they considered those persons employed in carrying away this bedstead as a part of the mob, because they said they took it with the purpose of destroying it, but as Green put the question and received the answer that they meant to destroy it, he let them carry it away. He says to affect Fisher, that he was breaking pannels of the doors, window-shutters, and frames; that this was early in the morning. If they were there, let it be what time it would, the time is immaterial; if they were there at any time while the house was part demolished, let it be one hour or the other, is just the same thing; but if the construction upon the Act had been that which is attempted on behalf of the prisoners it would have gone to shew that they were not the first beginners of the demolition, I think in point of reason, upon the true construction of the act, they are equally guilty, and come within the provision of this law.

Gentlemen, with regard to Fisher, he is said to have been breaking the pannels of the doors, and the frames; which no one can doubt was beginning to demolish, and was not to protect them, it was certainly part of the house; and it is said that Bartholomew Fisher, was engaged in these acts. He says that John Clifton, the other prisoner, was breaking the doors of the house, and window-shutters; and this was at an earlier time than he saw Green and Fisher.

Gentlemen, this seems to be almost the only, if not the only acts given in evidence to affect Clifton. It rests entirely upon the evidence of this man; if there is any thing else, it does not carry it a great way. He says that the other two, Clifton seems to have been the least concerned, if he was at all concerned in this transaction, but he says Green and Fisher were very active; but with regard to Clifton, he saw but little of him. These people came in a very riotous manner, before the house was begun to be demolished.

The cross-examination went principally to specify the time that these persons appeared, which to my apprehension, if they were there at all while this business of destroying the house was going forwards, the time that they came there does not appear material. I think from the whole

whole of the evidence the only thing that could be collected from it was that Green and Fisher were there before the other. This man says that he was acquainted with Green, he knew him very well, had been once in his company before, and that he knew the others; he says he came there about ten o'clock in the evening, and staid till the house was nearly consumed; the mob broke into the house about one o'clock in the morning.

The purpose of these people seems to be clearly to demolish the house; he was sent to fetch his master home, that brough him there, and he continued there to protect the furniture of Dr. Priestley.

The next witness, Joseph Foster, was sent by his mistress for a similar purpose to bring his master home; I suppose the masters of these witnesses were at Dr. Priestley's house to protect the property, the wife sent for them home for fear he should be hurt. He says when he went there it was about eleven at night; about one o'clock or afterwards the mob broke into the house, the door could not be opened, but they gained admittance by the windows. He says Mr. Clarke desired him to get what property he could save for Dr. Priestley's use; he confirms the testimony of Harris with regard to the bed that he was coming down stairs with, a bed the property of Dr. Priestley; the mob came up stairs, and asked what he meant to do with the bed, two persons in the hearing of the witness were Green and John Foster; he says, the bed was attempted to be pulled off his back twice; and the question was put to Harris what he was going to do with the bed, he told them he was going to destroy it; the reply was, Damn you, take it. To be sure, Gentlemen, when they made that reply, there is no doubt they supposed those persons were going to destroy this bed, as themselves were doing the furniture. He saw Green breaking the bedstead and the window-frame. With regard to the bedstead it might be to preserve or destroy it, but the window-frames could receive no construction but that of destroying the house. He says Green was active in getting the bed from him before the question was put, and that answer was given to him by Harris. He saw Green there after four in the morning, that he staid there till late in

in the morning; he says he was perfectly sober during the time; the question was put to him, what quantity of liquor he had drank; whether he was in a condition fit to give a testimony to be relied upon; he says he had been up all night, and neither eat nor drank till he returned to his master's house, Upon his cross-examination, he says the stairs were full of people, and would hold three people a-breast, and that Green was in the middle of them, and might hear what was said.

This testimony is confirmed by that of Foster. I do not see that there is any variance whatever, or I should point it out so as to impeach them. Now the manner in which he has given his evidence, the repeating every question, and not being able to specify the precise time, that from the apprehension of his not observing the particular time, it certainly could have no effect, if my construction is the true one.

Alexander Clarke says that upon the 14th of July, he was at Dr. Priestley's house; that there were eight persons before the house; several persons were there for the purpose of taking care of the furniture; that no mischief was at this time done; that about half an hour past twelve forty or fifty persons came up to the house, and they increased during the night to the number of three hundred or upwards, and that he saw Green there about four o'clock; that they at that time destroyed the furniture and windows, and doors of the house; that Green pulled the bedsteads up seemingly with an intention of breaking them. He had a piece of wainscot in his hand, that one would conceive was a part of the wainscot of the house; the mob was knocking the house to pieces at this time; and in the very room where Green was pulling the bedstead up, some persons, he says, had been and were taking down furniture for the purpose of preserving it, that he is certain as to the person of Green, for he had known him seven years.

Gentlemen, this is the evidence on the part of the prosecution. The prisoners being present at the demolition of the house, is proved by the evidence of Harris and Foster, and confirmed in the instances I have stated to you by Alexander Clarke.

On

On the part of the prisoner, some witnesses have been examined: the first of them,—

John Osborne, is to give you an account, which as I conceive, is meant to shew that Green was at another place at the time the demolition of the house was begun, but it does not come up to that at all in my apprehension, nor is it of any use to the prisoner, Green: none of the witnesses bring the prisoner to Dr. Priestley's house till four o'clock, Osborne says it was between three and four when he parted with him at Dr. Priestley's house, so that this does not assist the prisoner in any respect. Then the witnesses afterwards examined speak to the character of the prisoners.

Owen Probins, says he has known Green two or three years, that he frequented his house as a publican, behaved well, and paid his way, which is all a publican looks for, that we have nothing to do with, that is carried no farther; he says, he has known no harm of him; so persons that were entirely strangers might have said the same thing: however you will give it what weight you please, with respect to this character for Green.

Another witness is called for Green who tells you he had known him two or three years, that he always behaved well:—Then,

Richard Dingley comes to give the the character of Clifton, and this is a serious character; there were other people to his character but who are not here; but Mr. Dingley's character ought to go a great way, he has known him for the space of fifteen years, he says that he was an honest man, a sober man, that he was a sedate man: now a person that could have such a character from his master, who had known him fifteen years, it ought to have great weight with your minds; this character might have been supported by two other persons, but they have not been brought here, but their engagements are such that they could not attend.

John Brookes has known Fisher six or seven years, but knows no harm of him, but being pressed, he said some people spoke indifferently of him; this man being introduced has done him more hurt than good.

Gentlemen, this is the evidence on both sides; you will give it every construction in favour of the prisoners that it will bear: certainly I shall recommend it to you with respect to Clifton, that the evidence is so slight and the character so very strong and favourable, that you may consistent with very good consciences, dismiss him from the charge of the crime, find him not guilty, and I am in hopes you will distinguish him from the others; I am not saying that you should not acquit them also, but the acquittal of him is no ground why you should do the same with the others; but I think you will find him not guilty; any observations that I may have made, you will adopt or reject according to your own opinions. With respect to the other two, you will consider the evidence, and I am sure you will do your duty, and I shall be perfectly satisfied with whatever verdict you may think proper to give.

GREEN—Guilty---*Death.---Executed.*

FISHER—Guilty—*Death.* { But has since received his Majesty's most gracious pardon.

CLIFTON—Not Guilty.

JOHN STOKES,

For demolishing a Meeting-house in Old Meeting-street.

NAMES OF THE JURY.

John Guest, Birmingham
John Trebern, ditto
James Aspinall, ditto
John Merry, ditto
John Winfield
John Hinson

Christopher Law, Birmingham
Henry Parker, ditto
Edward Bower, ditto
Joseph Lyndon, ditto
John Clarke, ditto
John Eaves

Mr. BALGUY.—GENTLEMEN of the Jury, it falls to my lot, in the absence of the learned gentlemen who are assistants with me in supporting this prosecution upon the part of the Crown, to state to you the facts which we shall lay before you in evidence.....Gentlemen, in discharging this duty I shall not take upon me to address your passions at all upon the subject, all I shall do will be to state to you, in the clearest way that I can, that this is an offence against the Act of Parliament, and that the prisoner at the bar is guilty of that offence.....Gentlemen, the Act of Parliament you have heard much talked of in the course of the trials you have heard, but I believe there has been nothing before you yet but with respect to the demolition of the dwelling-house of a person or persons; this is not so, but it is equally a building protected by the provisions of this Act, for it is in the words of the Act of Parliament, a building for religious worship, certified and registered according to a statute made in the first year of the reign of William and Mary, entitled, "An Act for exempting his Majesty's Protestant Subjects, dissenting from the Church of England, from the Penalties of certain Laws." So that, Gentlemen, though this is not a dwelling-house, yet by this Act of Toleration, which is the name this Act usually goes by, this is a building the law meant to protect.....The building is alleged to be the property of the different persons stated in the indictment, and I will tell you why..... These are Trustees, in whom the property is vested under a Deed of Conveyance; therefore the learned Judge will tell you by and by, that in point of law it is perfectly regular

regular and formal to lay the property in those Trustees in whom the property is vested, for the benefit of those persons who may assemble for religious worship in that place.... As to the building itself the single question you will have to try will be, whether the guilt of the prisoner is sufficiently brought home by the evidence that I shall state to you.

Gentlemen, the evidence that I shall produce is this, this Meeting-house, with other buildings, was begun to be demolished on the evening of the 14th of July, a great mob was assembled there, and you will find in the morning of the 15th the prisoner will be found to be part of that mob.

Gentlemen, the part that he took in this transaction you will hear from witnesses that we shall call to you, and the part that he took was this, you will find him with a rafter in his hands, when the building was in part demolished, lending all the assistance he could to demolish the remainder of it; you will find him with this rafter beating the walls of the building, and endeavouring, as far as he could, to level that building with the ground.

Gentlemen that is not the only part that he took in this transaction, you will find him getting the wood and the materials of the building, you will find him taking the wood and making fires of it, and assisting the mob in endeavouring to demolish all the inside of this building.

Gentlemen, this is the sort of fact, as it will be proved to you by the several witnesses I shall call, and prove to you something in the way that I now state it to you.

Gentlemen, there is one fact which will be worthy of your observation with regard to the prisoner at the bar; and, Gentlemen, it is a fact that will apply to his case more than to the case of any other person assembled on that occasion, you will find that the other persons who were assisting in this unlawful and felonious act addressed themselves to him as the leader, speaking of him as a person who was to conduct this most wicked and this most infamous enterprize, speaking to him as their commander and as their general. This is the way that you will find that aged man addressed by the younger followers in this felonious enterprize during the time that this building, erected for the purpose of religious worship, was destroying, and was in part destroyed. Gentlemen, this is the sort of evidence that we shall produce against the prisoner.

Gentlemen,

Gentlemen, I told you before that I would not endeavour to inflame your passions by any address to them upon an occasion of this sort.

Gentlemen, my Lord told you in summing up to you the evidence on a former trial, that there was a debt you owed to humanity, and you would favour a man who stands in the unfortunate situation in which he stands as much as possible, but Gentlemen, if there is a debt of humanity to the prisoner, there is a debt of justice you owe to the public. We shall call our witnesses and prove the case in the way that I have opened it; I hope I have opened it correctly, I meant to do so; but if I have not, I caution you to attend to the evidence, and not to any thing that I may have stated to you incorrectly.

EVIDENCE FOR THE CROWN.

Thomas Lee sworn.—Examined by Mr. Percival.

Q Do you know the Old Meeting-house, in Old Meeting-street, Birmingham?....A Yes.

Q Tell us who are the legal owners, the Trustees.....A There are eleven of them.

Q Name them?.....A Thomas Lawrence, William Hunt, James Moore, Robert Mafon, James Jackson, William Humphrys, Joseph Tindall, Samuel Pemberton, Samuel Harvey, Robert Morgan, and Benjamin May.

(The Deed was produced.)

Q Were there any other trustees named in the deed who are now dead?.....A Yes, these are the surviving trustees.

Q Are there any others alive besides those you have named?....A I believe not.

Mr. WILLIS. Will you venture to swear that all the other persons whose names are mentioned, are dead?....A I will; I am a subscribing witness to the deed.

Mr. WILLIS. That is an answer to my objection certainly.

Mr. Oliver Hunt sworn.—Examined by Mr. Percival.

Q What is that in your hand?....A The Register of Meeting-house *(producing it)*.

Q What is the whole book?....A The book of the Records of the Session.

Q For this county?....A Yes.

Q Give us the date of the entry, and read it?....A "It is certified this 16th day of July, 1689, by us whose names are underwritten, at the general Sessions holden for the county of Warwick, &c." (*reading it.*)

Mr. CLARKE. Your Lordship sees by this statute the parties are bound to register their meeting-house or it does not come within the provisions of that statute, nor is it protected by the Riot Act; your Lordship sees the evidence is that this meeting-house is built in Old Meeting-street, or lane, the Register produced to the Court is of a meeting-house in Philip-street; I submit to your Lordship this is not the meeting-house mentioned in the Indictment.

Mr. PERCIVAL to Mr. LEE. Was Old Meeting-street always called by that name?....A No, there was no street near it when it was originally built.

Q Do you know the name of the street in which it was then built?....A It was built upon a piece of land called Careless's Croft.

Mr. WILLIS. How do you know that?....A By the deed.

Mr. WILLIS. If they do produce evidence to shew that Old Meeting-street was formerly called Philip-street, I shall then contend that it ought to have been stated in the Indictment that it appeared to have been registered as situated in a street formerly called so and so.

Mr. PERCIVAL to Mr. LEE. Pray is there such a street as Philip-street, Birmingham, now?....A There is.

Q How is it situated with regard to the meeting-house?....A I suppose two hundred yards from the present meeting house.

Q Does it run in a line with that street which is called Meeting-street?....A No.

(*Certificate of the Register produced.*)

Q. (to Mr. HUNT.) Is there any other Register?....A. No, there is not.

Mr. BALGUY. I will not contend this point with the Gentlemen; it will not do.

NOT GUILTY.

WILLIAM SHUKER,

For demolishing the Dwelling-House of John Ryland.

NAMES OF THE JURY.

John Guest, Birmingham
John Trebern, ditto
James Aspinall, ditto
John Merry, ditto
John Winfield,
John Hiltson,

Christopher Law, Birmingham
Henry Parker, ditto
Edward Bower, ditto
Joseph Lyndon, ditto
John Clarke, ditto
John Eaves

MR. BALGUY,.... **M**AY it please your Lordship—
 and Gentlemen of the Jury,—You have heard this In-
 dictment against the prisoner at the bar, which charges him
 with being one of the persons who assisted in demolishing
 in part the dwelling-house of Mr. Ryland.

Gentlemen,....this in part demolishing the house of Mr.
 Ryland was begun in the middle of the day, a circumstance
 of extraordinary outrage indeed; it was begun by different
 persons, of whom the prisoner at the bar was one; you
 will find from the witnesses the part that he took in it; he
 is the bellman of the Town of Birmingham, and you will
 find him at the riot and in the mob, with his bell in his
 hand, assisting to pull down and demolish the dwelling-
 house of Mr. Ryland.

Gentlemen, he not only assisted to pull down and de-
 molish the dwelling-house, but you will find him taking
 part of the furniture out of it, you will find him setting
 that furniture on fire, and doing all he could to put the
 house of Mr. Ryland into flames, that, Gentlemen, you
 will find from two or three witnesses who were present.
 they will give you an account of the transaction, and the
 part he took in it.

Gentlemen, this man's case does not rest singly upon that;
 you will find, from declarations that he made at the time,
 from a witness that we shall call to you, declarations that he
 made

made to the mob, encouraging the mob to complete that which they were doing; the expressions which he used, and will be proved upon him, I will state: while they were endeavouring to pull down and demolish this house of Mr. Ryland, you will find the prisoner, the bellman of Birmingham, encouraging the mob, and using these expressions, *Damn it, down with it*; so that he was not merely doing all he could himself to pull down the house by his own bodily strength, but you will find him giving encouragement to the rest of the mob to pull down and demolish Mr. Ryland's house.

Gentlemen, one should have thought that the part that he had taken in this transaction was such, that he could not afterwards have boasted of it as a matter of triumph, because the scene was so shocking, the consequences were so dreadful, that one should have imagined that every person concerned in so infamous a transaction, instead of boasting of what they had done, would have been glad to have sheltered their head in secrecy; but instead of that, after the house had been demolished, in the way you will hear, you will find the prisoner at the bar in conversation with a very respectable Gentleman of the town of Birmingham, a Mr. John Kendrick, a grocer at Birmingham, known to you all, hearing Mr. Ryland's house was on fire, and doubting whether the account he heard of it was the real and true account, he asked one of his servants whether it was true; the prisoner at the bar coming by at the time used these expressions, *He would be damned*—in answer to the question Mr. Kendrick was putting to his own servant, he was going by and hearing it, said—*He would be damned if it was not on fire, for that he himself was the first person that set fire to it.*

Gentlemen, this is the evidence we mean to lay before you: I will make no comment upon it; you will I am sure do justice.

EVIDENCE FOR THE CROWN.

Joseph Elwall sworn.—Examined by Mr. Percival.

Q Do you know Mr. Ryland's house at Easy-hill?....

A Yes.

Q Did

Q Did you see it on the 15th of July?....A Yes, I was going to work about half past two o'clock, I live in the same street.

Q Did you see any thing particular there?....A Yes, a large quantity of people breaking windows and throwing things out of the window, and crying church and King, and damn the presbyterians, they would burn them.

Q How many persons were there?....A I suppose about thirty, and many more coming up.

Q What did you see them doing?....A They were coming up and breaking the doors and windows of Mr. Ryland's house.

Q What did you hear them say, what was the cry?....A Down with the presbyterians, damn them we will burn them; they did not cry church and King.

Q Did you see any body there that you knew?....A Yes.

Q Who?....A William Shuker.

Q The prisoner at the bar?....A Yes, though I am very sorry for coming against him.

Q Was he one of the persons?....A Yes, with a bell in his hand.

Q Where did you see him first?....A Up in the room of Mr. Ryland's house, he was the first of the mob that I knew.

Q What had he in his hand?....A A bell and a truncheon, knocking the windows to pieces and the window cases.

Q What sort of a truncheon?....A A round stick, like what we stake our hedges with; it might be three quarters of a yard long.

Q Did you see him do any thing else?....A Yes, throwing bedsteads and chamber pots out of the window, and more than that, there was a coarse cloth with some things in it, what, I cannot tell, but a base woman, a woman of the town, said to Shuker, damn you Shuker mind your eye, he had had rather a sup of drink.

Q Who had?....A Shuker.

Q Tell us any thing more that happened?....A When the image was thrown down, he said, Down with them.

Q Is

Q What image?....A An image upon the porch as big as a young child.

Q You mean a statue?....A Yes, when the image was thrown down, he said, Damn them, down with them, we will burn them all, and rang his bell; it made me so uneasy, I could not bear it any longer.

Q What came out of the house?....A I do not know; we went to try to *qualify* the mob, and we *qualified* them a bit, they had got sticks, from which a gentleman got his death wound: and then I came away and left them.

Q. What time was that?....A About five o'clock.

Q What came of the house?....A It was burnt; I did not see it done.

Q Were the walls of the house standing?....Q Yes.

Joseph Elwall cross-examined by Mr. Darrell.

Q What might you be?....A A buckle-maker.

Q Not an image admirer?....A No, I do not admire images.

Q What led you to the house?....A I was going to work.

Q To Mr. Ryland's house?....A I was going to work by Mr. Ryland's house, it was my nighest way.

Q How came you up in the room?....A I was not on the inside of the house.

Q What time of the day was it?....A About half past two o'clock.

Q Is that the time you usually went to work?....A Sometimes it is.

Q Is that the usual time for journeymen to go to work?A I go when I please, I sometimes go down the market to fetch greens and things up.

Q So you stood by the whole time?....A Yes.

Q How near might you stand to the house?....A I suppose about four or five yards, so as not to be hurt.

Q. This image did not fall upon your head?....A No, or I should have been killed.

Q The prisoner had a truncheon and a bell in his hand?....A Yes, but I will not swear whether it was his bell or not.

Q Was

Q Was this man ringing his bell about the town, about his business crying any thing?....A If he was, he had no business there.

Q His business is to go about the town and cry any thing he is wanted to cry?....A Yes, it was in the room that I saw him with the bell.

Q. Was you in the room?....A No, the window case was knocked down.

Q. Was there no body else with him there?....A Yes, but I knew him exceedingly well.

Q How long have you known him?....A Twenty or thirty years.

Q There was a little quarrel perhaps between you?....A No, none at all.

Q You know Mr. Walker?....A What Walker, I do not know any Walker.

Q Upon your oath, did you not take ten shillings not to tell the truth?....A I did not, the man came and fetched me out of the place, and he said this coachman has got a trial under hand, and says he, do for him if you can, and told me I was wanted at the hall: when I came there nobody wanted me, when I came back, he said I was a noble fellow, and he would give me ten shillings: I took it for no bribe, I want peace and quietness.

COURT. What was this ten shillings given you for?....A I cannot tell what.

MR. DARRELL. So that a man that came from the clouds offered you ten shillings, and you put it into your pocket very well satisfied?....A No, he did not come from the clouds.

Q You took this not to give evidence?....A No, I did not.

Q And you did not swear?....A Yes, I did, and will again.

Q You did not receive money not to give evidence?....A Not as no bribe.

COURT. Was this ten shillings received by you for the purpose either of giving or not giving evidence?....A I do not know what he gave it me for, he said, you are a damned

damned good fellow, and be as easy upon me as you can, says he; go to Mr. Lee the attorney.

Q. There were some ladies, some base ladies, what are they?....A I mean women of the town.

Q. You was amongst those ladies?....A No, I have an honest wife at home.

Q. You know what those ladies are?....A Yes, I know them well enough.

Mr. PERCIVAL. When was this ten shillings given you?....A Last night.

Q. Who gave it you?....A I never saw the man before in my life.

COURT. It is very extraordinary that he should take ten shillings without knowing for what.

Q. Tell us what the man said to you at the time?....A Says he, Elwall I will give you five shillings, man, for throwing my fist in your face; says he, you are a damned good fellow.

Q. Now what do you conceive that to allude to?....A I do not know, there were two men put their fists in my face.

Q. You said that there were two men that put their fists in your face?....A Yes, says he, I will give you this ten shillings, and they shall not hurt you or abuse you any more: I told them, they had better go to Mr. Lee, or some attorney, or some counsel, as soon as I had taken the money; he said Damn him, I have done him; he would have given me ale or brandy, or any thing to drink.

Q. Was nothing said about giving evidence in this prosecution?....A No.

COURT. Then you took the ten shillings as a satisfaction for the injury those two men had done you yesterday morning?....A Yes.

John Hipkiss sworn—Examined by Mr. Balguy.

Q. Do you recollect being at Mr. Ryland's house at the time the mob was assembled on the 15th of July?....A Yes.

Q. Tell me whether you saw the prisoner there?....A Yes.

Q. Had

Q Had he any thing in his hand?....A Not at the time I saw him.

Q What time might that be?....A I cannot justly tell; it was sometime in the afternoon, and the place which was then on fire, had been on fire but a little time; there was a thin smoke ascending from the place which was set on fire, but no flame.

Q Was any damage done to the house at that time?....A Yes, the front windows were broke and there was a gentleman endeavouring to dissuade them from mischief.

Q The windows were broke, do you mean the window or the frame?....A The frame.

Q This was at the time you saw the prisoner?....A Yes.

Q Did you hear the prisoner say any thing to the mob, and what?....A Yes, I stood about the same distance I now do from the prisoner, and he said, Damn it, now down with it; his eyes were particularly fixed to the house, as a person was throwing a chest of drawers out of the window: he might be about fifteen yards from the house at that time, and not more: I did not see him do any thing more for I went to the other side of the house.

Q Did you know him before this?....A Yes, extremely well.

Q Did you particularize him from any circumstance at that time?....A Yes, from the expression, and from knowing him very well as being the cryer of the town.

Q You said you did not see the prisoner do any thing more, or say any thing more?....A No, I did not.

John Hipkiss cross-examined by Mr. Clarke.

Q What time of day was that?....A I cannot say the hour.

Q Was that the time the base women were there?....A I did not take notice of any persons besides the prisoner.

Q Had any thing been done at that time?—A Many of the windows were broken, and the frames beat out.

Q What became of the image?....A The three images were thrown off.

Q When was that?....A I cannot tell, I was not by at the time.

Q Before you went home, or afterwards?....A Before.

Q You did not see any thing of them?....A They lay upon the ground.

Q Was any thing thrown out of the window at this time?....A A chest of drawers being launched out, when the prisoner cried out, Damn it, down with it.

Q And when the drawers were coming out of the window, he said, Damn it, down with it?....A At the time they were falling, he said, Damn it, down with it.

John Luff sworn.—Examined by Mr. Percival.

Q Do you know Mr. Ryland's house?....A Yes.

A. Did you see it on the 15th of July?....A Yes.

Q. About what time?.....A Between one and two o'clock.

Q What did you observe at Mr. Ryland's house at that time?....A I went with some more neighbours in the street where my friends are, to assist Mr. Ryland in getting his property out.

Q What did you observe at that time?....A There were many people there of the rioters, I suppose one hundred before the house.

Q Did you see any body in particular there that you knew?....A I saw William Shuker there.

Q Had you known him before?....A Yes.

Q What was he?....A Town-cryer, I believe.

Q How long had you known him?.....A These four years.

Q Are you sure it was him that you saw there?....A I am certain of it.

Q Where did you see him, and what did you see him do?....A I saw him receive some wainscot and furniture out of Mr. Ryland's parlour.

Q What do mean by receiving them?....A From other people out of the window.

Q What did you see?....A Wainscoting and furniture.

A You saw him receiving it out of the window from other persons?....A Yes.

Q Did you only see him on the outside of the house?....A Yes, I saw him inside too.

Q What did you see him do there?....A I saw him carrying those things into an out-building.

A What did you see him doing in the house?....*A* Receiving the wainscotting from people that were pulling it down at the time.

Q What did he do with it?....*A* He took it, and threw it into the window of a place where there is a pear-tree.

Q More than once did you see him do this?....*A* Five or six times.

Q What became of him afterwards?....*A* I saw it made a heap of in the middle of the place, and there were five or six more chaps within side, and I saw him within side.

Q What did he do with it?....*A* Made a heap of it in the middle of the place.

Q Did he leave it as a heap, or do any thing more to it?....*A* He made a heap of it as I would a cock of hay.

Q What was done with it?....*A* It was set on fire.

Q By whom?....*A* The prisoner.

Q You say he put it into a window, where was this?
A In the road.

John Luff cross-examined by Mr. Willis.

Q In what part of Mr. Ryland's house might you be when you saw the prisoner receiving goods from the window?....*A* In no part of the house.

Q Then on which part of the outside?....*A* In the road, five or six yards distant.

Q In the front of the house?....*A* Yes.

Q Where was the place that the furniture was carried to?....*A* An out-building.

Q Whereabouts is it?....*A* Opposite to a Gentleman's house, an Iron-foundry.

Q By the prisoner?....*A* No.

Q Where was the place the prisoner carried the things to?....*A* An out-building belonging to Mr. Ryland.

Q Close by you?....*A* Yes.

Q Who sent for you?....*A* I went with a brother-in-law of mine to help to get Mr. Ryland's goods out.

Q You was not sent for, but went as a volunteer? pray what part did you take in these riots?....*A* I was active in securing the property.

Q So you pulled the furniture out?....*A* Yes.

Q The same as the prisoner did?....A No, I received it from Mr. Ryland's friends.

Q Out of the window?....A No.

Q Where this furniture was carried by the prisoner, there were a great number of people?....A It was adjoining the house.

Q Were there not a number of people?....A There were a great number.

Q Did you stand there during the whole time of the goods being got out and set on fire?....A I did.

Q There was some little confusion there?....A Yes.

Q Did you see where that fire was brought from?....A No.

Q Did you see who brought it?....A No.

Q Do you know a man of the name of Thomas Southall?....A No, I do not.

Q Do you know a man of the name of Barnes?....A No, I do not.

Q Have you never talked to two persons of that name respecting this business?....A I never heard either of the names before.

Q Now mind me, did you ever say to any person or persons whatever, that if they appeared for the prisoner you would make it worse for them?....A I did not.

Q You will swear that?....A I will.

Q Did you ever say this, that if they or any persons went before the magistrate to speak for this man, that you would make it worse for them?....A I never did.

COURT. Did you see the prisoner set fire to it or not; because you have sworn that you saw him, though afterwards that you did not?....A I saw the fire in his hand, but did not see him set fire to it.

Q Mr. WILLIS. Perhaps you may know that some hand-bills were dispersed by the magistrates calling upon the mob to desist?....A I never saw any thing of the kind.

Q Will you swear that you did not see that man at Mr. Ryland's house delivering hand-bills?....A No, I will not.

John Kenrick sworn.---Examined by Mr. Sutton.

Q Where do you live?....A In Birmingham.

Q Did

Q Did you see the prisoner at the bar at any time in July?....A Yes, the 15th I think.

Mr. CLARKE. At the time you saw him was he in liquor or not?....A He was.

Q Mr. CLARKE. Then I object to his being asked a question, that has been decided, I take it to be clear law.

Mr. SUTTON. What state was he in?....A So drunk that he could not walk steady.

Q At that time had you any conversation with your servant about Mr. Ryland's house?....A Yes; in the afternoon, between three and four, near four, my man informed me that Mr. Ryland's house was on fire.

Q At this time was the prisoner there?....A He came past while I was talking with my servant, he came by and said, Yes, he would be damned if it was not, for he was the first person that set it on fire; and he would be damned if he would not blow all the Dissenters up.

Q Had you made any application to the prisoner?....A I had not; he was passing by close to us.

Q So as to hear what you was saying?....A Yes, about a quarter of a yard off.

Mr. DARRELL. I submit to your Lordship that at any rate this evidence is not applicable to this Indictment; the Indictment is for beginning to pull down and demolish the house, therefore any thing of this kind is not applicable to this Indictment. Whether he set fire to those pieces of furniture or not is perfectly immaterial upon this Indictment; therefore I submit to your Lordship this evidence is not applicable.

COURT. Whether it does apply to it or not, I cannot tell till the evidence is received; and if it does not then apply, I shall make that observation to the Jury, that they may throw it entirely out of the case; I cannot tell what it may tend to in the end so as to affect the present charge.

Mr. CLARKE. Your Lordship seems to think the objection premature.

Mr. SUTTON. Just finish what you was saying....A He would be damned if he did not blow up all the Presbyterians,

John Kenrick cross-examined by Mr. Darrell.

Q This man was so drunk he could hardly walk ?....A
He could not walk steady.

Q He reeled about ?....A Yes.

Q Do you mean to swear that this man, who was so drunk that he could not walk, perfectly understood what was said ?....A I inferred it from his answer, he was so close to me.

Q What, was he conversing with your servant ?....A
No, he was coming past walking by my door.

Q Tell me whether you was in close conversation with your servant or not ?....A Yes, he was as close to me as two people generally are in conversation.

Q Did you before ever take notice of what a drunken man says passing in the street upon other occasions ?....A
When it is of consequence, I do.

Q That is, when you can make it of consequence ?....
A No, I was very sorry to appear at all, I did not wish to come into Court.

Q Was not you subpcœnaed ?....A No.

Q How was it these Gentlemen knew you could say all this ?....A Mr. Lee came to me, and asked me about it.

Q When was that ?....A Last Monday.

Q And not before ?....A No.

Q So you did not think it necessary to go before the magistrates, then as not being subpcœnaed you were not compellable, and yet you did not chuse to come, You would have us believe you came very unwillingly, though you came without any subpcœna to compel you to it ?....A
I was here as a spectator.

Mr. SUTTON. We have heard of your coming here ; when you communicated this evidence to Mr. Chamberlain, did you make any promise to attend ?....A No, not at that time.

Q Did you give any body reason to believe that you should attend since Manday last ?....A Yes.

Mr. DARRELL. I must submit to your Lordship as there is another indictment against this man relative to another house, I do submit this evidence now we have
demolish

got the whole of it, is not of beginning to pull down and demolish the house, and therefore this evidence is not all proper to be received.

Mr. CLARKE. My Lord, it is a sort of objection that hardly admits of any argument because it seems sufficient to state the evidence, and then ask how it applies to the present indictment. Is setting fire to a house pulling it down? The question answers itself.

COURT. I understand from the evidence that this place that was on fire, and the prisoner at the bar is supposed to put fire under, was in an out-house. I do not conceive that setting fire is beginning to demolish; if a man is charged with stealing a horse, and it is offered in proof that he confesses he stole a cow, that will not prove that he stole the horse. Whatever act he makes use of to commit the offence, I think is evidence to be received, but as they have an indictment for that specific purpose, I would not apply it in this case.

Mr. DARRELL. The witness says he set fire to the things after they were taken out of the house, and not to the things in the house.

Mr. COKE. I think this is perfectly right, if your Lordship understands the indictment properly, but the next indictment is for setting fire to the out-house by demolishing it with fire; and it is too much to argue that a fire is not a source of demolishing. If I lay a train of gunpowder under a man's house, do not I demolish it most completely; and the next indictment being for setting fire to an out-house you cannot apply it all; the other is for setting fire to an out-house, which is a distinct affair.

Mr. BALGUY. There is one way in which this evidence is extremely material, and that is this, in order to prove that the prisoner took a criminal part in this business that was going on, my Lord, the evidence against him is, that he assisted the persons in carrying away some of the wainscoting from the rooms, that he laid it of a heap and set fire to it....Now this is evidence to shew that this prisoner took a part in that transaction which regarded the pulling in pieces and demolishing Mr. Ryland's house, because, when assisting those who were demolishing the house and the wainscot of the house, and he being the hand

hand that did it, and for the purpose of destruction; it is evidence to shew that he took a part in that riot which went to the pulling to pieces and demolishing Mr. Ryland's house, it is in that way that I apply it,

COURT. I think I ought to receive the evidence, I do not know how I can do otherwise.

EVIDENCE FOR THE PRISONER.

George Griffiths sworn.—Examined by Mr. Clarke.

Q Do you know Elwall?....A I saw him last night.

Q There was an application made to him to compromise a dispute?....A I do not know.

Q Did you see any money given him?....A Not as I know of; as I was walking in the Court I saw Walker give the man half-a-guinea, and he gave him six-pence back.

Mr. PERCIVAL. I object to this evidence, it is competent to them to give evidence of general character against any witness we may call, but to give evidence of any particular fact that tends to discredit is not evidence to be admitted....Our witness cannot come prepared to support the truth of this fact which is not material to the question now before the Court; it is not part of that evidence which he has given against the prisoner, for it is that which Mr. Clarke was competent to get out of the mouth of the witness himself, but not being able to get it out of himself, he is not now at liberty to call any witness to speak to any fact upon that known ground of objection, because every person whose character is not put in issue in the trial cannot come with witnesses ready to support his testimony.

COURT. You are very right in the objection supposing you was coming to impeach the character with facts that he was not apprised of before, but this man does not contradict what the witness admitted, this man says ten shillings was given him;....the only question that I decide upon is, what was the inducement for his receiving it.

GRIFFITHS. I asked Elwall what he received it for, and he told me he had received it to say nothing before my Lord, on account of the two men that he was the cause of going into prison yesterday morning.

Mr. CLARKE.

Mr. CLARKE. When Walker paid him this ten shillings did he say, Damn him, now I have done him?....A No such thing.

Mr. PERCIVAL. Who was present besides you?....A No one that I know besides the man that gave the money.

Q Was you there till they separated?....A Yes, the whole time.

COURT. Did you hear the whole conversation that passed?....A No, I did not.

— Walker sworn.—Examined by Mr. Clarke.

Q You gave ten shillings to Elwall?....A Yes.

Q Did you then say, or immediately after, Damn him, now I have done him?....A No.

Q Never?....A Never in my life.

COURT. What did you give it him for?....A I asked him about the misbehaviour of those two men yesterday, and he said if I would give him ten shillings he would not appear against them.

COURT. Had you any intention by offering him that sum of money that he should not appear to give evidence against the prisoners at the bar?....A No.

Mr. SUTTON. Was you drunk?....A No.

Thomas Southall sworn.—Examined by Mr. Clarke.

Q Do you know that witness, Luff?....A Yes.

Q Do you recollect having any conversation with him respecting the prisoner at the bar?....A Yes.

Q Did he say any thing to you what would happen in case you went before the Magistrates?....A Yes, he told me if I went it should be a great deal worse for the prisoner, if I went in.

Thomas Southall cross-examined by Mr. Sutton.

Q When was this?....A On that day as they were tried at the Swan, on Tuesday.

Q Was any body present?....A Yes.

Q Who?....A Mr. Barnes was.

Q Upon this what did you do?....A Barnes and I told him we would go in for the prisoner.

Q Has

Q Has it been worse?....A No.

Q How happened this conversation?....A This man said if there went any witnesses in for the prisoner it would be a great deal worse for them, and I immediately said I would go in then.

Q Had you told him you would give any evidence?....A No.

Mr. CLARKE. Was you employed to take care of the goods at Mr. Ryland's?....A No.

Joseph Barnes sworn.—Examined by Mr. Clarke.

Q Do you recollect Luff saying any thing about the prisoner if the last witness went before the magistrates?....

A Yes, I was at the Swan, and Mr. Luff was there, and several others, and they were talking about the business, and this other man, the witness for him, said he came in behalf of him, and Luff said if he did come into the parlour it should be worse for him, he would make it worse for him, for he would say that he never said yet.

Joseph Barnes cross-examined by Mr. Sutton.

Q How happened Luff to say this?....A I was telling him I was come there in behalf of Shuker, and he made answer, if any of us went in he would make it worse for us, and in consequence of that I went away....It would be worse for Shuker.

Q Luff said it would be worse for Shuker, not for you?....A Yes, for Shuker.

Mr. CLARKE, Was you employed to take care of the goods?....A No.

COURT. If you have any thing to say for the prisoner, say it?....A I saw the mob and staid there some time, and helped to carry the things away for a considerable time; and afterwards I saw a smoke come out of the brewhouse; I went in and kicked the fire on one side, and told them it was a pity they should do so, but I never saw Shuker at all.

Joshua Short sworn.—Examined by Mr. Clark.

Q Do you know Luff?....A Yes, very well

Q Whether

Q. Whether from your knowledge of him, he is a man to be believed upon his oath?....A He is not, he is a very loose man.

Joshua Short cross-examined by Mr. Clarke.

Q Would you have said so before the 14th of July?
....A Yes.

Q Are you sure of that?....A Yes, I laid out some money for him in building a slaughter-house, and he used me very ill.

COURT, What are you?....A A Wheelwright in Birmingham.

— *Hodgskins sworn.*

Q Do you know Shuker?....A Yes.

Q How long have you known him?....A Eight or ten years; I always took him to be a quiet harmless man, but he would drink.

— *Payton sworn.—Examined by Mr. Clarke.*

Q Do you know the prisoner?....A Yes.

Q How long have you known him?....A Four years.

Q How has he behaved?....A During that time I have frequently employed him as a porter, and I never heard his honesty impeached in my life.

John Lowe sworn.—Examined by Mr. Clarke.

Q Do you know the prisoner?....A Yes, I have known seven or eight years.

Q What have you heard of him?....A He is a very honest man, but foolish in getting liquor

Q You was one of the peace officers of Birmingham?
....A Yes.

— *Lucas sworn.—Examined by Mr. Clarke.*

Q Do you know the prisoner?....A Yes.

Q How long have you known him?....A Five years and three quarters

Q How has he behaved during that time?....A I have employed him as porter, and I have have employed him in every room in my house; and I would trust him with
untold

untold gold: I have employed him constantly for a twelvemonth.

Mr. SUTTON. He used to get drunk?....A Yes.

Q Is he noisy and riotous when drunk?....A No.

Q Why, he was a cryer by trade, you know?....A Yes.

— *Fletcher sworn.*

Q Do you know Luff?....A Yes, he is a neighbour of mine.

Q Is he a man deserving of credit?....A No.

COURT. Is he to believed upon his oath?....A I cannot tell, he has defrauded his creditors.

Mr. SUTTON. I think you represent him to have been one of your neighbours, and did not pay his creditors?A He wanted to transact a matter that was very ill with me.

Q. But did not you say he had not paid his creditors?A Yes, he ran away from them.

Thomas Grimes sworn.—Examined by Mr. Clarke.

Q Do you know the prisoner?....A Yes.

Q How long have you known him?....A Between two and three years.

Q As far as your knowledge goes, how has he behaved?....A Very well, I never heard any thing bad of him in my life.

SUMMING UP.

COURT. Gentlemen of the Jury, this is an indictment against the prisoner at the bar, for riotously assembling with a great number of persons and feloniously beginning to pull down and demolish the dwelling house of John Ryland, in Birmingham, on the 15th of July against the Riot Act.

Joseph Elwall, the first witness, tells you that on the 15th of July last, about the middle of the day, about half past two o'clock, he was going to his work, and in the way to his work, passed by the house of Mr. Ryland; he says he saw thirty persons, at least, assembled there, breaking the windows and doors of that house, crying, Damn the presbyterians, damn them, and they would burn them;

them : he saw the prisoner there using those expressions ; the prisoner, he says, is a cryer in Birmingham, and he saw him at first when he came there, in a room in Mr Ryland's house ; he says he had a bell in one hand and a truncheon breaking the windows in the other hand ; he says there was an image on the outside of the house, which was thrown down, and the prisoner rang his bell, and said, Down with them, we will burn them.

Upon the cross-examination, this evidence is endeavoured to be impeached by his receiving the sum of ten shillings last night here : now I conceived he had received this, either to suppress evidence that he knew respecting this charge against the prisoner at the bar, or for something that related to this trial : but, gentlemen, it was upon a different account, for this man made a complaint to me yesterday morning, that two men had used him ill, put their fists in his face, and he was examined upon oath, what treatment they had made use of ; I found it was supported upon oath, and I committed them to prison ; they are now in goal for contempt of the court, and deserved the punishment of confinement till, at least, that trial was over ; now he says, that when he was charged in this way, that he received the ten shillings without any reference to this trial, that two men had in the morning put their fists in his face, and both of them were in prison, and that a man whom he was an entire stranger to and proves to be one Walker, who is afterwards examined, gave him this ten shillings ; he took it, and then added to this evidence, that Walker after giving the money and he had accepted it, went away, saying, Damn him, I have done him.

Now, gentlemen, the persons called on the other side to impeach this man's testimony, have confirmed him in every thing respecting the cause of his receiving the money ; that it was only respecting those two men in custody, that they might be released, and that it had no reference whatever to this trial of Shuker ; but Walker denies that he followed the act with the expression, 'Damn him, I have done him ; if he did make use of this expression, I cannot conceive what it could allude to, unless defeating the evidence upon this trial, he had given him
ten

ten shillings, he had done him so far, that is all: if this expression was not made use of, the evidence given is, that you might disbelieve every thing he has said, for if he is falsified in any particular, it throws an imputation upon the whole of his testimony; for you have no reason to believe that one part of his evidence is more agreeable to truth than another; therefore you will give what weight you please to this; if you believe that no such words passed, you will judge whether he was not mistaken in that particular, and whether it will prevent you from giving him credit with regard to the other facts. Then the next witness is,---

John Hipkiss; he says he was at Mr. Ryland's the 15th of July, he saw the prisoner there just at the time the place, the house or out-building of Mr. Ryland was on fire, the flame was just ascending; the fire had just been set to it, he heard the prisoner say, Damn it, down with it.

Now, Gentlemen, that does not in my apprehension, necessarily mean the house; you will put upon those words the best construction in favour of the prisoner, if any favourable construction can be put upon it, I will presume you will put that. A chest of drawers was put out at the window at the time, therefore it might mean that; it does not in my apprehension, respect the house.

The next witness is, John Luff; one witness on the part of the prisoner, does not believe him a person that ought to be believed upon his oath; and another witness speaks to his not deserving credit, alluding to his having run away from his creditors, and not paid them; that does not apply as the testimony of the other witness does. Luff says he saw him there between one and two o'clock; he says he saw him receiving some wainscotting and furniture that was put out of a window, and carry it to an out-building five or six times; he says, there was great confusion, and a great number of people there. Now this man says, and he was asked and cautioned, and told an evidence would be brought to prove that expression upon him, he positively said, that if he appeared for the prisoner, it should be worse for him.

The next witness is, Thomas Southall. He says he was at the examination at the Swan after these riots, and
Luff

Luff said if the witness went before the magistrates, it should be a great deal worse for the prisoner; but however he did go.

Joseph Barnes said, he heard Luff say if any of them went into the parlour, it would be worse for them; that if they came to give testimony in favour of the prisoner, he would say that he had never said before, and that it should be worse for Shuker, upon which the witness went away. Now this evidence is adduced in order to shew that Luff has given a false testimony; and two witnesses contradict him. What he means by saying it should be worse, implies, he would not protest so strongly against Shuker, if either of them went.

Joshua Short tells you Luff is not a person to be believed upon his oath.

Then, Gentlemen, in my opinion, this is a contradiction to this man, if you believe him, you are justified in throwing this man's testimony entirely out of the case, if that testimony of Short is true, it weighs so much, that his evidence may be thrown entirely out of the case.

With regard to the other witnesses, I have made all the observations that have occurred to me upon their evidence, and you will judge from that. That evidence against him seems to be very slight, indeed he seems to have been a drunken fellow running about the town.

Kenrick has given evidence which I do not know whether I ought to state to you or no. He says the prisoner said he was the first who set the house on fire; this depends on memory, and at such a time, when all the rioters were about, we cannot rely critically upon any particular word that might be made use of.

The evidence on the part of the prisoner as to contradicting Luff, I have already stated. He appears to have always deserved the character of a hard-working honest man. Payton tells you so, and Lowe tells you the same. Another witness has known him eight or ten years, and Hodgkins has known him seven or eight years. Lucas thinks he might be trusted with untold gold, and it does not appear to me that he was in the house himself doing this mischief.

Fletcher says he does not think Luff a man deserving of credit. Another witness says, the prisoner has always behaved well.

Now Gentlemen, a man with such a character as this man has, with such a number of witnesses who give testimony that he is addicted to liquor, and that at this time he was in such a state; this appears to be so slight a case against the prisoner at the bar, that I think you might very well say he is not guilty of the charge.

NOT GUILTY.

WILLIAM SHUKER was a second time indicted for setting fire to an out-house belonging to Mr. Ryland, on the 15th of July.

The Counsel for the Crown declined giving any evidence upon this indictment.

NOT GUILTY.

JOSEPH

JOSEPH CARELESS,

For pulling down the Dwelling-House of John Ryland.

NAMES OF THE JURY.

John Guest, Birmingham

John Trebern, ditto

John Merry, ditto

John Winfield, ditto

John Hinson, ditto

Christopher Law, ditto

John Eaves

Thomas Edkins,

Edward Dunn, Kennilworth

John Cox, Napton

Richard Radburn, ditto

John Clarke, Birmingham

The Indictment was opened by Mr. *Percival*.

Mr. NEWNHAM,.....**G**ENTLEMEN of the Jury,....

Hitherto,—in the conduct of these prosecutions which his Majesty's ministers, from the paternal care and affection of his Majesty for all his subjects throughout the realm, have directed, at the public expence in ease of the private individuals, to be commenced and prosecuted; I, perhaps a very unworthy servant of the Crown, am pitched upon to conduct, and, with the assistance of my very learned friends to state the circumstances of this prosecution to you—I have refrained hitherto, and shall in the course of the prosecution, studiously refrain from stating any thing to you that may either in my judgment, or in the apprehension of any by-standers, excite improper passions on the present occasion, but only to suggest to you that this prosecution, among others, is not carried on for the vindictive purposes of punishment with any particular view to the unfortunate prisoner at the bar, but merely for the sake of public justice, and to read this wholesome lesson to all his most gracious Majesty's liege and faithful subjects, that his government, and the peace of all the subjects throughout his wide domains, is not to be interrupted by a lawless rabble, and tumultuous riots. It is not for the sake of Mr. Ryland, it is not to bring to punishment the person who stands at

the bar under the name of Joseph Careless, whose name I never heard of till I was coming this circuit, but it is for the purpose of reading this lesson to the world, that his most gracious Majesty does not mean any thing more, or any of his ministers, than to say, that in times of public riot, and public confusion, and tumultuous assemblies, his ministry and his government will stand forth as the assertors and protectors of the English law; that is the tenure and the only tenure by which you and I, and every man who hears me, holds every thing that is dear to him; it is by that security alone that we live, and under which we enjoy our liberty: it is not at the capricious will of a tumultuous rabble that we are to hold either our opinions or our property: it is not because a lawless rabble has attacked the Town of Birmingham, that hitherto peaceful seat of commerce, that men are to sit quiet under the disturbance of their houses and families, to have the one either demolished or burnt, and the other disturbed, because a riotous, insulting, and irresistible mob, chuses to take umbrage at this or that man, and to pull down his house, and reduce him to beggary and misery.

Gentlemen, This case is one of those that the County civil magistrates, with all the exertions that they could use, assisted by the neighbouring magistrates, could not stem or quell: it remained for the slow but irresistible law of the country, which as long as I live I desire to live under, and which every man that hears me admires and reveres, which though it has leaden heels has iron hands, and will sooner or later bring to punishment the persons concerned in these riots.I do not state to you the general confusion of the Town of Birmingham: I do not state to you, the interruption of that commerce by which it was grown great and important in Europe: I do not state to you the precarious tenure by which every man from the 14th to the 16th of July, every man held his property at the will and caprice of that riotous and mad assembly that was found collected in different parts of the Town; but I state this to you, that the unfortunate prisoner at the bar stands here to acquit himself before you, the only constitutional tribunal of the country, who are to decide whether he is or not guilty of the offence with which he stands charged.

Gentlemen,

Gentlemen, upon the 15th of July last, a tumultuous rabble assembled, which it was the wise provision of our ancestors, early after the accession of the illustrious House of Hanover, to prevent the consequences of, by enacting a wholesome law, imposing serious and capital punishments upon the infringers of the peace of the realm..... The wholesome provisions of that law stated, that if a certain number of persons, beyond twelve, assembled together, either demolishing in the whole, or beginning in part to demolish the houses of any of his Majesty's liege subjects, the persons so concerned were within the pains of felony..... You and I, Gentlemen of the Jury, have nothing to do with the intentions of the Legislature.... I find this law upon the Statute-Book, and the learned Judge is, than whom no man is more ready or more able than the very learned and respectable Judge upon the Bench, to execute the commission delegated to him, the great and wise expounder of the Crown, is now before you here to direct your judgment. And, Gentlemen, I will upon this occasion state the circumstances that bring the prisoner within this law..... Upon the 15th of July, Gentlemen, that man, among others, whose face I never saw till now, against whom I have no enmity, against whom personally none of his Majesty's servants have any enmity; but he stands to us charged, and by the finding of the grand Inquest of this County charged, with an offence which brings him immediately within the provisions of that wholesome law..... He stands charged with being one of the persons, among a number of rioters, who assembled upon the 15th of July last, and carried their hellish purpose into execution..... He stands charged with beginning to demolish the house of a Mr. Ryland..... Who Mr. Ryland is I know not.... A gentleman I do not wish to know.... I am told that he is a person living at Birmingham.... when he had a house wherein to live he was living there.... where he is now forced to shelter himself I know not.... His house has been dismantled by an assembly of which that man has been an active ringleader. He is stated to me to be one of the persons heading the assembly, huzzaing and hallooing "Come along my lads, come along, follow me, we will destroy this house." Let not

that unfortunate man think I have any personal enmity against him.....Let not any body present think that Government have any other motive than what is proper and honourable, and the most charitable intention of Government is, that when occasion calls for it they will stand forth as the public assertors of the law of the country, and as the public protectors of the injured subjects of that country which enjoys the most parental care of his most gracious Majesty, who is the guardian of us all.

Gentlemen, in that character I stand before you, pledged to prove, from the instructions laid before me, that that man was an active man amongst them....Permit me to tell you, under the direction of that very honourable and respectable Judge upon the Bench, that this man during the riots, whether he did any thing or not by his own hands, which I will prove he did, it is sufficient for the effectual purposes of justice or of the benignity of the law of England.....That man comes within the meaning of the Act if he stood forth in the way I have stated, but I will prove that he, by his own hand, contributed to the demolition of this house, and he will appear to you to have been an active instrument in this infernal purpose.....Gentlemen, I do not put it to your feelings, I demand nothing but the execution of that justice which the law of England expects from Juries....When once a Jury departs from that, without any private knowledge which they themselves may have, without listening to those feelings which I hope and trust I have about me as much as any gentleman to whom I am addressing myself, if a Jury departs from that, the law is vague and uncertain.....It is upon evidence alone that I demand your justice.....Whether your verdict be for the prisoner or for the public, upon this occasion, it is to me most perfectly indifferent.....All that I wish, and all that I expect from you, is this, that listening to your oaths and to the evidence, you will acquit your feelings, and do that duty to yourselves which has been the glory of this country; namely, that any man who stands charged with a criminal offence in this country, may appeal to a Jury of his Peers, and to that Jury I commit the care of the prisoner.

EVIDENCE

EVIDENCE FOR THE CROWN.

Thomas Cooper sworn.—Examined by Mr. Coke.

Q Was you at Birmingham upon the 15th of July last?....A Yes.

Q Did you go at any time on that day to Mr. Ryland's house?....A Yes.

Q What time in the day?....A The first time was about twelve o'clock, I was requested by a Gentleman to go to Mr. Ryland's door and try to get some of the mob away by giving them drink.

Q What time did you go again?....A About three in the afternoon.

Q Who did you see there that you knew?....A The prisoner, crying out church and King.

Q What was he doing?....A He went into Mr. Ryland's house, and I saw him carrying things out,--liquors. After that I saw him throwing bricks and stones up at Mr. Ryland's window.

Q Did he go in and out of the house frequently or only once?....A Several times.

Q And when he returned back again what did he bring with him?....A Something in bottles, I do not know what.

Q You have told us he cried out church and King at first, tell us what he said at different times afterwards?....

Q He said, come my lads, we will soon have it down.

Q Had that any effect upon the mob? What did the mob do?....A They were still throwing up at that part of the house.

Q Throwing up stones?....A Different things.

Q Did any other people go into the house or not as well the prisoner?....A I did not take any notice of the people that went in.

Q But did any people that you did not know go into the house?....A Yes, a vast number of people.

Q What was he throwing?....A Brick-ends or stones.

Q Throwing them against the house and windows or both?....A Against the house, the sash part of the window was then out.

Q Was the window-frame out or not?....A I did not take notice, the glass was out.

Q Do you mean taken out?....A Broke out.

Q Several whom you did not know went into the house?

....A Yes, backwards and forwards.

Q To what number?....A I suppose above a dozen at a time.

Q Did they go in in a peaceable manner or a riotous manner?....A In a riotous manner.

Q Did several people go into the house or not?....A They did.

Q In a riotous manner?....A Yes.

Q Then before these people went in in this riotous manner, did you observe the prisoner do any thing?....A After he came out of the house he threw stones or bricks up to the other parts of the house.

Thomas Cooper cross-examined by Mr. Clarke.

Q How long have you been acquainted with the prisoner?....A I have known him these four or five years.

Q What are you, Sir?....A A hair-dresser.

Q How came you at this place?....A Mr. John ——— desired me to go up to Mr. Ryland's door, and try to get the mob away.

Q You went to try your influence with the mob?....A By his desire.

Q How came you to think you had any influence with the mob?....A I had no acquaintance with them.

Q How came you to suppose you had any influence?

....A He asked me to go.

Q He must suppose you had some influence with the mob, or he would not have sent you?....A He knew that I had no acquaintance with them.

Q Do you suppose that was the reason why he sent you?

....A I do not know.

Q Did you dress any of them?....A No.

Q You saw him throw stones up at the window?....A Yes.

Q And you told us that the prisoner had some bottles of liquor; that is all you saw?....A Yes.

Q You did not preach to them?....A No.

Mr. COKE. You are a near neighbour of Mr. Ryland's?
....A Yes.

Q How

Q How near?....A Four or five hundred yards.

Q You told us all you heard?....A Yes.

Thomas Parker sworn.—Examined by Mr. Balguy.

Q Did you happen to be at Mr. Ryland's house in the afternoon of the 15th of July?....A I happened to be in the piece at work; just before four o'clock me and my man went round that way to dinner, seeing the mob; they were carrying the goods out, and Mr. Ryland's coachman desired us to help them to carry them away, and we did.

Q Tell me what number this mob consisted of, to the best of your way of thinking?....A When I went up to the house first, I suppose there were an hundred people there.

Q Were they rioters or orderly people?....A A Some rioters and some standing by to look on.

Q Was there any noise made by any body?....A Yes, they were hooting huzza.

Q Did they demand any thing to be brought to them?A I never heard them.

Q How long did you stay there at that time?....A It was not a quarter of an hour from the time I went up to Mr. Ryland's house till the last.

Q During that time did you see any mischief done at the house?—A Yes.

Q I mean the first time you was there?....A I never was there but once.

Q What did you see done?....A I saw the prisoner at the bar with a long rail, I took it to be an oak rail, about two yards long, he was knocking down the brick work of the bow window, he would strike it four or five times together, and then another would pick it up and he would drive at it, but who it was I cannot say: when they struck the last blow, they would fling the rail at it, and then it would come down smack, and another man would pick it up.

Q What did the other man do with it?.... Knocking it down the same as the prisoner did.

Q What became of the rail when the other man had done?....A I cannot say, for I went home.

Q Did you see the prisoner beat at it more than one turn?....A No.

Q How many blows did he give it?....A Four or five.

Q Had this any effect upon the wall they were beating, did it hurt the wall?....A Yes, the bricks were knocked out, and then they shouted out and huzza'd.

Q You say, you stayed but a quarter of an hour?....A Yes, and then I went away to Mr. Shipton's house.

Q Was you acquainted with the prisoner before this time?....A Yes, I had known him six or seven years; I cannot say not for a year.

Q But you knew him?....A Yes, and his family.

Q You knew him perfectly well?....A Yes.

Q You are sure he was one of those men when the mob assembled, that took this stick and beat at the bow window?....A He was the man when I went up; there were five or six of them, and he was one of them in a blackish waistcoat, a black silk waistcoat.

Thomas Parker cross-examined by Mr. Willis.

Q At the time you are speaking of, how many persons were about the house at that time?....A I suppose one hundred behind and in one place and in another; some they said were in the cellar, but I never was there.

Q When you first went to the house, in what part of the house did you place yourself?....A I stood about three yards off.

Q But what part of the house?....A In the foot road.

Q What are you?....A A master gardener

Q What street do you live in at Birmingham?....A At Hollaway-head.

Q Is the prisoner a gardener also?....A I cannot say what he is, he jobs about.

Q Do you mean to swear he is not a gardener?....A He professes it, but whether he was apprenticed to it or not I do not know.

Q He has a wife and family lives at Birmingham?....A No, at Harborne.

Q In what part of the House did you first place yourself?....A I never was in the house.

Q Are you a jobbing gardener?....A No, I am a master gardener.

Q You keep gardens of your own....A Yes.

Q And the prisoner goes about jobbing as a gardener?
....A Yes.

Q I should be glad to know why you told me you did not know he was gardener?....A I said I did not know he was apprentice to it.

Q But my question was whether he was a gardener or not.—You say there were several people about this house?....A Yes.

Q Was the glass of the window out or in?....A It was all out and the house was on fire.

Q Where was the fire?....A There was a fire up stairs, I believe, by the light.

Q Was there any fire in the room where this bow window was?....A I cannot say.

Q But all the glass was out and all the window frames?....A Yes.

Q Will you swear there was no fire in that room?....
A I cannot.

Q If you was so near as to see what was done at the windows, you must be nigh enough to see whether there was any fire in the room?....A No, the wall was so high I could not see, there was some smoke came out of the windows.

Q Have you neve rseen fire without smoke, or smoke without fire?....A Yes, I have seen a coal smoke without fire.

Q Then if all the glass was out and the windows out, this rail could not do much harm?....A He was knocking at the brick work.

Q Now I take it, if there was a fire in this room, throwing bricks into the room would put the fire out?
....A I cannot say.

Q Would it not smother the fire....A I do not know.

Q To be sure it would?....A Yes, if there were many thrown into it, it would.

EVIDENCE FOR THE PRISONER.

Elizabeth Grice sworn.—Examined by Mr. Willis

Q You are a married woman?....A Yes.

Q Where

Q. Where do you live?....A In Hill-street, Birmingham.

Q Do you know the prisoner?.... Yes.

Q Do you recollect seeing him at Mr. Ryland's house when it was on fire?....A Yes.

Q Tell the court what was his conduct there?....

A There was a boarded place there, and he was going to let the pigs out, because they should not be burnt.

Q He said so?....A Yes, and threw some hay out because it should not be burnt; they were going to set the hay loft on fire, and he threw out the trusses of hay and straw that it might not be burnt.

Q How long did you stop there?....A About half an hour: the mob saw him and they threw the fire at him to burn him, because he was preserving the hay and straw.

Q Did the mob say any thing to him?....A The mob damned him, and bid him let it alone.

Q How long have you known the prisoner?....A Three or four years.

Q He has a wife and family?....A Yes.

Q How many children has he?....A Three.

Q What has been his character during the time you have known him?....A He always bore a very good character, I never heard any thing to the contrary.

SUMMING UP.

COURT. Gentlemen of the Jury, This is an indictment against the prisoner, similar to several you have tried during these assizes, for riotously assembling and with force feloniously beginning to demolish and pull down the dwelling house of John Ryland, of Birmingham, upon the 14th of July last.

This prosecution is supported by the evidence of two persons.—The first is,

Thomas Cooper, a hair dresser, at Birmingham, he lives near Mr. Ryland's; he says upon the 15th of July he was at Mr. Ryland's; he was desired by a gentleman to go and endeavour to persuade the mob to depart without doing any mischief to the house. He says that he went away soon after, and he came again about three o'clock, then he saw the prisoner at the bar, Joseph Careless, go into

into Ryland's house, and bring out liquors, and crying out, church and King: he says he came out and said, Come my lads we will soon have it down.—Now, gentlemen, the acts given evidence of, you will couple with his expressions, and those expressions will denominate his intention in doing those acts; and you will from those expressions put a construction upon his acts. The mob were throwing bricks and stones against the house, and the prisoner was acting in the same way, throwing them against the bow window, the glass was part of it broke, there were a dozen persons in the house at the time, who went there in a riotous manner. This is the substance of his evidence. The next witness is,—

Thomas Parker, he says he went to Mr. Ryland's house upon the 15th of July last; he went to see the mob there assembled; about one o'clock that day, there were collected in and about the house, about one hundred people, some of them very riotous and some very quiet; they were huzzaing, and appeared to be acting in a riotous way, he continued there only a quarter of an hour, he saw the prisoner with an oak rail in his hand, knocking down the brick work of the bow window, he did this act four times, I think he says, he repeated his blows four or five times, the rail tumbled down, and and then some other person assembled there, took up the rail and acted in the same way the prisoner had done before: the bricks were knocked out by these acts, and being pleased with this demolition of the house, the parties concerned in it, shouted out and huzzaed.

This, Gentlemen, is the evidence in support of the prosecution. These parties knew the prisoner very well, and they are sure that he was the man. The prisoner, one of these witnesses says, works as a gardener; it appears he does not work as a gardener at Birmingham; the intention of that examination was, as I conceive, to induce you to be of opinion that this was evidence given by a gardener against a gardener, in order that he might have fewer opponents in his business: there seems to be nothing of that kind in this man's business, because he appears not to live at Birmingham, but at some distance

tance. He says the house was on fire, that the smoke came out of the windows.

This is the whole of the evidence on the part of the prosecution.---

For the prisoner, one witness has been examined to induce you to believe that he came there, not with a purpose to do any thing prejudicial to Mr. Ryland's house, but that he came there to preserve the property, for he would not let two pigs be destroyed, and endeavoured to take the hay and straw away, that they should not be burnt; and that the mob, wishing that nothing should be saved, quarrelled with the prisoner, and damned him for attempting to preserve these pigs.---Now, Gentlemen, supposing you believe the evidence upon the part of the prisoner with respect to the pigs, and the hay and straw, neither the pigs nor the hay were in the place where this bow window was. This woman tells you, she has known the prisoner three or four years, that he bears a very good character.

Gentlemen, this is the whole of the evidence; you will form your judgment upon that: if you are of opinion that this man was instrumental in the demolition of Mr. Ryland's house, crying out, church and King, as the witnesses have stated it, you will find him guilty, if not, you will acquit him.

NOT GUILTY.

WILLIAM

WILLIAM HANDS, *alias* HAMMONDS,

For pulling down the Dwelling-house of John Ryland.

NAMES OF THE JURY.

John Guest, Birmingham

John Trebern, ditto

John Merry, ditto

John Winfield, ditto

John Hinson, ditto

Christopher Law, ditto

John Earves

Thomas Edkins

Edward Dunn, Kennilworth

John Cox, Napton

Richard Radburn, ditto

John Clarke, Birmingham

Mr. NEWNHAM.—GENTLEMEN of the Jury,....

I rise up under the most serious impression, and with a great deal of feeling, but to stifle that feeling as far as is consistent with my duty, and with the utmost deference to you, to state to you, under the hazard of the correction of the Court, that your only guide upon this occasion is the solemn oath you have taken, and the evidence which you will hear at the Bar.

Gentlemen,....It is not a common case that I rise to address you in.....It is a case that all the activity, the commendable activity, of the magistrates of the county exerted to the utmost of their power, could not in any degree prevent, much less effectually stop.

Gentlemen,....You have heard the charge against the prisoner, that he, in company with a riotous assembly of persons, in the language of the indictment, to the amount of fifty or more, came to the house of a Mr. Ryland, in the town of Birmingham; that they, and the prisoner at the bar, who was one that was active among them, who, without listening to any entreaties, began to pull down his house.Gentlemen, whatever feelings you may have about you, they had no feelings of humanity about them; they had none of the feelings of charity about them; they carried into execution the purposes of destruction for which they were assembled, in defiance of the

the law, in opposition to all the commendable endeavours of the neighbouring magistrates, and in absolute defiance of the general peace of his Majesty and of his realm....If you think this opposition to the law, which is our protector, does not lay you under the necessity of calling upon God to witness the truth of your verdict.....I am not calling upon you to protect your own property, because of that I say nothing, but I am calling upon you, as a set of Jurymen, to decide according to evidence.....I say, if you think this case, when proved, does not call upon you for judgment, I wish you to sleep quiet in your beds.

Gentlemen, I have done....You shall hear my evidence and judge.

EVIDENCE FOR THE CROWN.

James Trueman sworn.---Examined by Mr. Coke.

Q You was at Birmingham upon the 15th of July last?

....A Yes.

Q Did you go on any part of that day to Mr. Ryland's house?....A Yes.

Q What time was it?....A Between four and five in the afternoon.

Q When you went there what did you see?....A A great mob of people round it.

Q Amongst them did you see any body you knew?....A Yes.

Q Did you see that man?....A Yes.

Q What was he doing?....A Knocking the window-cases out.

Q What was he knocking them out with?....A A piece of wood.

Q A small piece or a large piece?....A A middling sized piece.

Q Was he knocking out the windows or window-frames?....A The window-frames.

Q Are you sure that is the man?....A Yes.

Q How many people were assembled round?....A A great many, an hundred or two I dare say.

Q Rioters, or peaceable people?....A Some of both sorts.

Q Were

Q Were many of them rioters, or few, or how?....A There were a great many of them that did not do any thing, and a great many that did.

Q Did you know him before?....A Yes, I had known him five or six years.

Q And you are sure he was there doing that?....A Yes.

James Trueman cross-examined by Mr. Clarke.

Q What time was this?....A Between four and five in the afternoon.

Q How came you there?....A I heard it was on fire and went to look at it.

Q It was on fire, was it?....A Yes.

Q How far had the fire got?....A Only just at the top of it.

Q The fire began at the top of the house?....A No, the top part of the building.

Q How far do you live off?....A In Coventry-street.

Q How far is that from Mr. Ryland's?....A Perhaps half a mile.

Q Where was you when you heard it was on fire?....A In Digbeth.

Q How far is that from Mr. Ryland's?....A About half a mile.

Q So the news came to you at the distance of half a mile, and you went to see it, and yet the fire had done no mischief when you got there?....A It must have done mischief or it could not have been a fire.

Q You know your being informed of it and going to it must have taken up sometime....Now be so good as tell me how far it was got?....A The brewhouse was on fire, the very top of the building.

Q The top of the building was all on fire?....A Yes.

Q How long might you stay there?....A Till between four and five, from between three and four.

Q Above an hour?....A Yes.

Q What did you do while you was there?....A Nothing at all but looking on.

Q Are you sure of that?....A Yes.

Q Quite sure?....A Yes.

Q You saw this man, the prisoner, knock at the window-frames?....A Yes.

L

Q What

Q What had he in his hand?....A A piece of wood about the thickness of my wrist.

Q And at this time the house was on fire?....A Not while he was knocking out the windows.

Q What makes you so quick about; have you any particular interest in it?....A Not as I know of.

Q What makes you so much interested in it?....A I cannot tell.

Q I should be glad to know what makes you so much interested that you should start up in that way, that you should cry out so suddenly, now give me some reason for that?....A I thought you supposed I spoke of their knocking the window-cases out.

Q Did you think it was material that that part should not be on fire at that time?....A No.

Q How long have you known the prisoner?....A Five or six years.

Q When did you first speak of this?....A On the 15th of July.

Q Who did you tell of it?....A My master.

Q What time on the 15th?....A About six o'clock.

Q What has been your knowledge of the prisoner?....A He belonged to the same shop as I did.

Q How long did you work together?....A A great while.

Q How many years?....A Three or four years, off and on.

Q How came you to be so anxious to go and talk of this?....What particular reason had you for being so very anxious against this man?....A None at all, only speaking the truth.

Q But why so anxious about it....you was not called upon to say any thing about it?....A Yes, I was.

Q What, did your master ask you if Hands was there?....A I told him.

Q Did he ask you?....A No.

A Then how came you to tell him? Did your master ask you any thing about him?....A I told my master he was there, and he insisted upon my speaking the truth.

Q Did you see your master as soon as you got home?....A No, I saw him at six o'clock.

Q And

Q And the moment you saw him you told him?....A Yes.

Q Without being asked any thing about it?....A Yes.

Q And against a man you had worked with for three or four years?....A Yes.

Q Had there been no quarrelling between you?....A No, none.

Q There must be some reason why you should be so desirous of hanging a man you had worked with for three or four years. Why was you so very anxious to say, Not at the time he was knocking out the window-frame; was there no particular reason?....A None.

Q Do you mean the Jury to understand that you speak with all this anxiety against a man you had worked with, and been intimate with for three or four years, without any kind of reason?....A There was none; I had not had any words with him.

Q Never?....A It is a long time since.

Q I thought I should find you out.

Mr. COKE. What sort of a quarrel was it?....A Shop-mates often have words, but bear no malice.

Q How many years ago?....A I cannot tell; a great many.

Q Did you work for the same master then?....A Yes.

Q And do you come here because your master insisted upon your coming?....A No, I came here to speak the truth.

Q Have you had a subpoena?....A No, but I am bound over to prosecute.

Q How long did you stay at the house?....A Above an hour.

Q Was the house burnt down before you came away?....A Not entirely.

Q Nor thereabouts?....A No.

Job Harvey sworn.—Examined by Mr. Balguy.

Q Was you at Mr. Ryland's house?....A Yes.

Q Upon this 15th of July?....A Yes.

Q What time was it when you went there?....A Between three and four in the afternoon.

Q Look upon the prisoner William Hands?....A Yes, this is the gentlemen.

Q Did you see him before?....A Yes.

Q Was there any mob assembled?....A Yes, a very big mob.

Q What were they doing?....A Knocking the things to pieces, and many of them were knocking the things to pieces in the house.

Q Were they doing any thing outside the house?....A Yes; I saw nobody but him that I knew, he was knocking the window-frames to bits.

Q What had he in his hands?....A A great piece of wood; a square piece of wood.

Q Tell the gentlemen of the Jury how he was using this square piece of wood against the window frames?....A He held it in both his hands working out the window-frames.

COURT. At the window-frames?....A Yes.

Q Tell me whether at this time any part of the house was on fire?....A Yes.

Q Which part was that?....A The top part of it; they call it the brewhouse, I think.

Q On what part of the house was it he was knocking out the window-frames?....A In the new building put up lately.

Q On the side where the brewhouse is or a different part of the house?....A At the bottom part of the house.

Q A different part of the house?....A Yes.

Q Tell me whether you saw the prisoner on the inside of the house?....A Yes, I saw him inside the house.

Q Tell me in what room you saw him?....A In the new room, the same room where they were at work at the window-frames.

Q When he was on the outside?....A Yes.

Q You call it the new room, do you?....A Yes.

Q Tell me whether you saw him do any thing on the inside of this room?....A Yes, he was helping them to pluck the boards of the floor up, and hauling them upon the fire.

Q Where was the fire that you speak of?....A When I saw them hauling them into the fire, the fire was in the next room to it.

Q What room?....A I cannot tell.

Q Upon

Q Upon the ground floor, or the chamber?....A The room over the cellar, a boarded floor, all on fire.

Q And next to this room where they were pulling up the floor?....A Yes.

Q You have given us an account of this activity of the prisoner on the outside of the house, and on the inside, now tell us whether you knew the prisoner before this time?....A Yes, I worked with him at Mr. Dixon's.

Q How long had you worked with him at Mr. Dixon's?....A Two or three months before.

Q Were you perfectly acquainted with his person?....A Yes.

Q Are you sure that that man was the man that you saw beating out the window frames, and plucking up the floor?....A Yes.

Q You swear it before these Gentlemen, that you saw him do it?....A Yes.

Job Harvey cross-examined by Mr. Willis.

Q Pray what may you be; do you know what you are?....A Yes, I dare say I know what I be.

Q What are you?....A A man.

Q I did not take you for an ass; what trade are you?....A I work at the anvil, and waggon axle-trees, and button-dyes, or any thing of that sort.

Q Then you are jack-of-all-trades?....A Yes.

Q What might you be doing at Mr. Ryland's house?....A I was doing nothing at it.

Q Merely amusing yourself?....A Yes, walking about, and looking at them.

Q You thought it good fun, I take it?....A It was not bad fun I think, I was doing nothing.

Q The fun is, that you are not indicted, I suppose?—A Yes.

Q How long might you stop there?....A. About an hour and a half.

Q I should be glad to know what your employment was; who sent you there?....A Nobody.

Q What was your employment for that hour and a half?....A Looking about, and seeing what mischief they had done; and what ruins was done, and what was being done.

Q Who was with you?....A Mr. Trueman.

Q You was a fellow-workman of this man's?—A. Yes.

Q Did you mention this to any body?....A Yes, to Mr. Dixon.

Q When?....A One night as we sat up at Mr. Dixon's.

Q What night?....A It was of a Saturday night.

Q On what day of the month was it?....A The sixteenth, I think.

Q And you never mentioned it to any body before that?....A No.

Q How came you to mention it to him?....A I do not know, we had got a sup of drink there, and we were saying how we see Billy at work, knocking the things to pieces.

Q When did you mention it to Mr. Dixon?....A Then.

Q Was that the first time?....A Yes.

Q How came you to tell him of it?....A We were laughing, and saying they were knocking the things to pieces, and we happened to mention his name.

Q His name was mentioned by accident?....A Yes.

Q Trueman was there, was not he?....A Yes.

Q Who told Mr. Dixon first, you or Trueman?....A I cannot tell which.

Q That was the first time you ever told Mr. Dixon of it?....A Yes.

Q Did you discover at all from Mr. Dixon that he knew before that Hands was there?....A I do not know whether he knew before; I did not tell him before.

Q Did you collect from any thing Mr. Dixon said that he knew before that Hands was there?....A I did not.

Q Did Trueman tell him of it then?....A Yes.

Q He did tell Mr. Dixon of it at that time?....A Yes.

Q You told us you saw the prisoner there with a piece of wood in his hand, what kind of a piece of wood might that be?....A A square piece of wood.

Q How large?....A It might be four feet long.

Q How thick?....A I cannot tell.

Q Was it as thick as this candle?....A Four times as thick.

Q How long might you work with the prisoner?....A Two or three months.

Q How

Q How long ago is that?....A I worked with him before this.

Q You was at work with him at this very time?....A Yes, before he went along with the rioters.

Q Then the account you give is, that your brother workman never said a word of this till the 16th, and then you told it to Mr. Dixon, who appeared not to know it before?....A Yes.

Q And Trueman told him of it at that time?....A Yes.
Mr. CLARKE. I leave this case with your Lordship.

SUMMING UP.

COURT. Gentlemen of the Jury, This is another case for an offence of a similar nature with the last, and you will form your judgment upon it.—It is for me to make such observations upon the evidence as occur to my mind: whether you will adopt any of my observations or not, is very indifferent to me; for whatever verdict you give I shall be perfectly satisfied.It is my wish, if it were consistent with your own consciences, that you would acquit every prisoner you try,....that is my wish.Whether you adopt or not the observations I offer to you, it is my province to offer them, and I am extremely glad whenever your consciences can be satisfied that a person charged with a crime ought to be acquitted of it.

Gentlemen,....In this case there is no evidence in favour of the prisoner; but the observations of his counsel, who have acted with great ability, and have done every thing that it was possible for the persons for whom they are concerned.There is no evidence given for the prisoner; but the witnesses for the prosecution seem to have known the prisoner exceeding well, one of them five or six years, and the other some months; they worked together for some time, from which it is insinuated, that there was some thing of cruelty in their coming to appear against him, as they were fellow workmen; and to impeach their testimony, it is attempted to shew that the testimony of the first witness is not true, because Dixon, to whom he had given the information, did not appear, from any thing the other witness observed, and he had no reason to think that Mr. Dixon had been informed of this be-

fore by any person. Of that gentleman, you will judge upon the evidence, whether it has any influence to affect the testimony of these witnesses.

The first witness is James Trueman, he appears to be a person working in the same trade and business with the prisoner at the bar: he says he has known him exceedingly well; he says he had known him for five or six years, and they had worked together for three or four years; he knows his person perfectly well, so as to be able to swear that he is the man. He says that he was at Mr. Ryland's upon the 15th of July, between the hours of three and four in the afternoon, that there was a great mob assembled round; that the prisoner was in the act of knocking out the window frame at that time; that those persons began to be riotous in the manner that he describes; that there were two hundred persons assembled round the house, some of them rioters, and others who were seeing what was going forwards as spectators. He says that the prisoner was knocking out the window frames; if that be true, gentlemen, what purpose could he be there for, but for the purpose of pulling down the house. He says that there was a fire begun, but not in the house; the house was standing long after that fire. He says he staid there about an hour, that the prisoner at the bar, had a piece of wood in his hand, about the thickness of his wrist, which he was making use of in knocking out the window. He repeats again, that he is sure the prisoner is the man; that he has known him five or six years; that they worked together under the same master for the space of three or four years. The next witness is,—

Job Harvey, who was with Trueman at this time, he confirms his testimony, he appears to have been in the character of a smith, making different articles. He says he was at Mr. Ryland's on the 15th of July with Trueman, between two and three in the afternoon he saw the prisoner; and that there was a very big mob pulling and knocking things to bits in the house; there was nobody there that he knew, but the prisoner: and he says that he was knocking things to bits with a square piece of wood, working at the window frames; the top part of the house was on fire at this time. He says that where the
prisoner

prisoner at the bar was employed, was not at the brew-house, but at another part of the house, in a new building at the bottom of the house, where he was knocking out the window frames: he was not satisfied with destroying the outside of the house, by breaking out these window frames, and knocking them out with that piece of wood he had in his hand, but he went up stairs into the room and pulled up the boards of the floor, he carried those boards into the next room, which had a boarded floor, and made a fire with those boards he had pulled up out of the other room. He tells you he is well acquainted with the prisoner, he could not be mistaken in the man; and that he is sure the prisoner was the person: that afterwards, upon the 16th, Trueman tells you, he informed his master; it seems to be very harsh, and the counsel for the prisoner enquired what should induce him to give evidence against a fellow workman, which should affect his life; he says he gave that information to his master, and by the direction of his master, he agreed to give his testimony: that he has had quarrels with the prisoner at the bar, but bears no malice; quarrels happen now and then, as in workshops they very often do; but that no malice was borne against him; and that he comes here to speak the truth at the instigation of his master.

Gentlemen, this witness says that they had a sup of drink together, and Mr. Ryland's house came to be discoursed about; and in the course of that conversation he informs Dixon, that he saw the prisoner there; that he was very busy knocking out the window frames: he says Trueman was there at the same time; he had never given any information to him with respect to the prisoner; he did not make any observations upon Mr. Dixon's conduct; he did not appear at that time, as if he had been previously acquainted with this fact.

This, gentlemen, is the whole of the evidence: there is no evidence whatever upon the part of the prisoner at the bar to contradict it; and it appears to me to be evidence to bring home the charge in this indictment to the prisoner at the bar; but if you are of opinion that any thing said against him deserves not to be believed, or, you know
any

any thing of these persons to impeach their credit, or, to make you think they are incompetent to give their evidence, you will find the prisoner not guilty; but if not, you will find a verdict according to the evidence. Whether you find him guilty or no, is according to your own minds: I am sure it will much more satisfy me, if you can consistent with your consciences, find a verdict for the prisoner.

GUILTY.---Death. } Respited; under full expectation of his Majesty's most gracious Pardon.

.....

JAMES WATKINS.

For pulling down the Dwelling-house of John Ryland.

NAMES OF THE JURY.

John Guest, Birmingham
John Trebern, ditto
John Merry, ditto
John Winfield, ditto
John Hinson, ditto
Christopher Law, ditto

John Eaves
Thomas Edkins
Edward Dunn, Kennilworth
John Cox, Napton
Richard Radburn, ditto
John Clarke, Birmingham

Mr. NEWNHAM.—**G**ENTLEMEN of the Jury,—
 I will not detain you long.....I will say nothing upon this subject but this, that you will hear proved in evidence that the prisoner at the bar was instrumental, and actively instrumental, in beginning to demolish the house of Mr. Ryland.....Added to that circumstance, he will be proved to you to have had an instrument fitted for destruction, and which was for the purposes of destruction, used in knocking to pieces the windows and the doors.

EVIDENCE FOR THE CROWN.

Nathaniel Addock sworn.—Examined by Mr. Percival.

Q You know Mr. Ryland's house?--A Yes, on the 15th of July I was there at two o'clock and again at seven at night.

Q Did you stay from two till seven?....A I was not in the building all the time, I was outside the walls.

Q Be so good as tell us what you observed?....A I saw the prisoner knocking the door to pieces, and the door-case afterwards.

Q Was he the only person there?....A A great many besides him.

Q What did you see about the house?....A I saw the images pulled down; there were an hundred or two about the building.

Q Riotous persons?....A No, lookers on, the rioters were inside the building.

Q How many of them were there do you think?....A I cannot tell, I was not inside the house, there were a great number pushing up the sash, and the first things I saw were bibles or great books thrown out, and mahogany chairs, and things thrown out.

Q What did you see the prisoner do?....A Breaking the back door out of the kitchen with an axe which he had in his hand, and was at work at the door-case, when I left him he was at work with both his hands.

COURT. Do not you recollect how many persons were concerned in the riot?....A I cannot tell.

Q How many do you think?....A I did not see them inside the house.

Q Inside and out were there five?....A Yes, and more, they were huzzaing, church and King for ever.

Q Were there twenty do you think?....A Yes.

Q Did you see him do any thing besides chopping the door?....A I did not see him do any thing else besides knocking the door to pieces, and the door cases.

Q The door of the kitchen, and the door cases?....A Yes.

Q Was it the case of the kitchen door?....A Yes, with the head of the axe.

Q What was the state of the house at that time?....A It was all in flames.

Nathaniel Addock cross-examined by Mr. Willis.

Q At the time you saw the prisoner with the axe in his hand at this door, was any other person about him?
.... A No.

Q And I think I understood you to say, you saw a great number of persons lookers on?....A Yes, but this was the back part of the house.

Q I understood you to say that the prisoner was using an axe with both his hands?....A Yes.

Q Now perhaps you are not acquainted with the fact of the prisoner having lost the use of one hand?....A I have seen him mould bricks.

Q How a man who had lost the use of one hand could be working with two, I cannot tell. You told me just now there were a great number of persons looking on?--A Yes.

Q And that the greatest part of the time that you were at Mr. Ryland's house you were on the outside, I mean while you saw the prisoner with the axe in his hand?....A Yes, it was between four and five.

Q At that time you say two or three hundred people were looking on?....A Yes, and more I suppose.

Q At that time all the persons who were doing mischief were on the inside?....A Some were on the outside.

Q What were they doing on the outside?....A Knocking the window-cases to pieces, and throwing them into the flames.

Q How many were at work at that?....A I saw only two at work at that, and I saw a man light the stable, and another light the coach-house.

Q Did you see any more?....A No.

Q Those persons who were within the house you did not see?....A No, only those at the windows.

Q How many might you see there?....A Five or six at different windows within side.

Q Now tell me how many you saw in an active state on the outside of the house?....A I saw him at different times.

Q Mind me, I am speaking only as to the time you saw the prisoner with the axe at the door....How many did you see in an active state at that time?....A At the back of the house, just then I did not see above four.

Q And about five or six at the windows?....A Yes, before, but not at that time.

Q Then all the persons you saw in an active state at that time amounted to four only?....A Four or five, I cannot say exactly.

Mr.

Mr. PERCIVAL. I understood you to say you did not see above four at the back of the house at that time?....*A* Not at that time at work.

Q Do you mean including or excluding the prisoner?....*A* Yes, including the prisoner, he was hallooing and huzzaing.

Q How many do you suppose were hallooing and huzzaing?....*A* I cannot tell, they were hallooing inside and out; there were most hallooing out.

Q How many might there be?....*A* There might be an hundred.

Q Can you undertake to say there were ten people hallooing and huzzaing church and King at that time?....*A* Not all at a time.

Q No, but within the space of five minutes?....Q Yes, because it was the cry of every man one met, church and King.

Q How many were there inside the house?....*A* I cannot tell.

Q How many did you see at the windows?....*A* They were at almost every window.

Q How many?....*A* I cannot tell.

Q But as near as you can?....*A* I did not number the windows but they were at almost every window, throwing mahogany chairs and drawers out

Q How many might there be?....*A* I cannot tell.

Q But were four windows in the house?....*A* Yes.

Q Five?....*A* I cannot say exactly.

Q I dont want you to say exactly, do you think there were ten windows?....*A* They were at the top of the house, at the garrett, throwing things out as high as they could go.

Q Besides a great number hallooing at the same time?....*A* Yes,

Q You have seen the prisoner moulding bricks?--*A* Yes.

Q Upon those occasions did he use one or both hands?....*A* Both, I have seen him carry clay and mould the bricks with both hands.

Mr. WILLIS. At the time you saw the prisoner working with this axe I should be glad to know how many you saw

saw in an active state at that particular time?....*A* There could no more work at that place than him.

Q But I mean at Mr. Ryland's house?....*A* I did not take particular notice, they were at work at all parts, there might be as many as five.

Mr. PERCIVAL. How many might there be that were acting riotously?....*A* I cannot tell exactly, because there were so many people; one did not know who were rioters and who were not; they held up their sticks and said, Damn your eyes, who is for Lady-wood.

Q How many went off?....*A* I do not know, for I came away.

Q During the time you were there how many might you see huzzaing and acting as rioters?....*A* I cannot tell.

Q I do not want to confine you to one or two; can you swear to ten?....*A* I can.

Q Can you swear to twenty?....*A* I cannot.

COURT. Gentlemen, you must find the prisoner not guilty, it is necessary there should be twelve.

Mr. NEWNHAM. I beg your lordship's pardon.

Mr. WILLIS. It will be for your lordship to say whether you think seeing they were only to the number of ten, the prisoner can be considered as acting with the rioters.

Mr. CLARKE. It begins with saying, That if any number of persons to the number of twelve or more.

Mr. BALGUY. What does that apply to.

Mr. CLARKE. You are to construe the whole statute together.

COURT. I have understood that the number of persons riotously assembled, must amount to twelve, at least, and then the Riot Act is to be read.

Mr. BALGUY. This is not an indictment upon that clause.

COURT. I have no doubt at all about it; it does not appear to me to be a matter that his Majesty or his Counsel would be concerned for.

Mr. CLARKE, It says, If any persons riotously assemble to the number of twelve.

Mr. WILLIS. It is certainly meant to apply to riots of the same sort: it begins with, If any persons to the number

number of twelve or more, and then proceeds to enact different crimes and penalties to persons so assembled.

MR. COKE. The evidence is, that there were four or five persons riotously concerned in the same act; and when asked more particularly to the number of them, he says, he can swear to the number of ten. My Lord Chief Baron held, that this was as much an act of rioting as pulling down parts of the house; and the witness said there might be an hundred.

COURT. It is very proper to leave it to the Jury; I am certain that they, from their good conduct, will not convict, unless they think the act will bear this construction.

SUMMING UP.

COURT. Gentlemen of the the Jury. You have heard the evidence and you will judge of it. This indictment charges the prisoner with riotously assembling and beginning to demolish the dwelling house of Mr. John Ryland, upon the 15th of July last.

Nathaniel Addock is examined; he says that about two o'clock in the afternoon, he saw the prisoner with an axe in both hands, knocking down the door of the back kitchen and the door case; he says there was nobody at the back of the house when this was transacted, but the prisoner; but in the windows there were four, and among them all, he cannot say that there were rioters beyond the number of ten. Now, gentlemen, a riot may be committed by three: this Act of Parliament says at the outset, 'That if twelve persons shall be assembled, the Justices of the Peace, Sheriffs, or Mayor of the town, shall read the proclamation, and if they do not immediately within the space of an hour, obey that proclamation, they shall be considered as felons without benefit of clergy.' And the provision in this Act of Parliament goes on, that persons beginning to demolish the house shall be equally penal. According to my idea, the Legislature meant, that twelve persons, at least, should be assembled in those cases. This does not appear to me, to be a case so clear in point of evidence, that conviction ought to follow upon it.

MR. NEWNHAM.

MR. NEWNHAM. If your lordship has not decided, I had rather that that question respecting the Act of Parliament, your lordship will be kind enough to save for the opinion of the twelve Judges.

COURT. But let the Jury decide the fact, and then let it be saved for the opinion of the judges.

NOT GUILTY.

.....

DANIEL ROSE,

For pulling down the Dwelling-house of John Taylor, Esq.

NAMES OF THE JURY.

John Guest, Birmingham
John Trebern, ditto
John Merry, ditto
John Winfield, ditto
John Hutton, ditto
Christopher Law, ditto

John Eaves
Thomas Edkins,
Edward Dunn, Kennilworth
John Cox, Napton
Richard Kadburn, ditto
John Clarke, Birmingham

MR. NEWNHAM.—GENTLEMEN of the Jury,....
 I look at the prisoner at the bar, I see he stands charged with being one among a multitude of rioters, for pulling down, or beginning to pull down and demolish, the house of Mr. Taylor.....Though that elegant mansion was, in consequence of this riot, destroyed;....though he stands charged, among others, with a riot destructive of that elegant mansion, belonging to a person whose family has been the father, I had almost said, of Birmingham, yet, when I look at the prisoner standing here, as the prosecutor of the Crown, and consider his youth, that he is not above sixteen years of age, I compassionate that youth, and shall decline giving any evidence against him, to shew

shew you, Gentlemen, that Government is no more vindictive, but as ready on every proper occasion to shew lenity as you Gentlemen have been in acquitting those whom you have acquitted.

NOT GUILTY.

Mr. CLARKE. It is but justice to my learned friends to say, that they have conducted these prosecutions with the utmost candour, and with the greatest honour to Government and themselves.

.....

SENTENCE.

COURT.—**F**RANCIS FIELD, you have been convicted of feloniously burning the dwelling-house of John Taylor, Esq. against the Riot Act.....JOHN GREEN, and BARTHOLOMEW FISHER, you have been also convicted of beginning to demolish the dwelling-house of Joseph Priestley, L.L.D.....And WILLIAM HANDS, you have been convicted of a like offence, in feloniously beginning to demolish and pull down the dwelling-house of John Ryland.

The offence you have been guilty of, is of a very unusual and extraordinary nature....It has occasioned an alarm to this whole country, not to Birmingham and the neighbourhood only, but to the whole kingdom, it is an offence of such a nature you can none of you expect the least mercy, or any alteration in the sentence that the law inflicts.....It is mercy to the public to execute the law, in making an example of persons who have been guilty of such crimes, in order to preserve the property of the industrious and innocent, and to preserve them from the depredations of such persons as you are....Such practices will

will certainly bring you to a fatal and ignominious end.... All the service I can possibly do to you is to recommend you to employ the short time that will be permitted to you to live in this world in order to secure a happy eternity.... The certainty of death, and that very speedily, requires a speedy repentance.... Yours is such a case that you cannot have the least expectation of the smallest remission..... It only remains for me to pass the sentence, the dreadful sentence, of the law upon you, which is, that you be severally taken to the place from whence you came, and from thence to the place of execution, that you be there severally hanged by the neck till you are dead, and the Lord have mercy upon your souls.

Field and Green were executed pursuant to their sentences, on Thursday the 8th of September following, and are the only two who have suffered at Warwick.

FINIS.

